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WASHINGTON, D. C. - - - - JANUARY 4, 1888

OUR FIFTEENTH YEAR.

THE WASHINGTON LAW REPORTER, in entering upon the fifteenth year of its publication, presents most cordial greeting to all of its friends and patrons.

And in this first number of our paper, published in the new year, we desire to remind the members of the legal profession throughout the States, that ours is the only legal periodical published at the National Capital. As our office is only a short distance from the United States Capitol, where the Supreme Court of the United States holds its sessions, we especially enjoy the opportunity of obtaining for publication at the earliest moment the valuable decisions of that august tribunal.

During the present year we contemplate the publication in full of the leading decisions of that court, and also an abstract of all of its opinions rendered upon matters of general interest to the profession, as well as the full report of the decisions of our court in general term, and decisions of the United States Court of Claims. Also, an index of the leading articles in the exchanges, and a number of valuable essays upon important questions of law and practice arising in the courts of the United States, as well as in courts of the several States.

In our publication of legal references and citations, we will endeavor to include a reference to the page or section of the most recent text-book bearing upon the question. The Congressional Law Library, with its vast collection of books, affords us the most ample facility for examination of the latest publications, both English and American.

We congratulate ourselves upon the steady growth and increasing popularity of our paper. Its advertising and subscription lists bear ample testimony of the esteem in which it is held by our legal brethren.

It is our hope, that in the management of the paper, we will deserve the approval of the members of the bar at home as well as abroad, and that THE WASHINGTON LAW REPORTER will receive its full share of their patronage.

ASSIGNMENT OF JUSTICES.—In the court in General Term it was ordered that the following assignment of justices be made:

To the General Term, to be held in January, April and October, Chief Justice Bingham, Justice James, and such other Justices as may from time to time be disengaged.

Circuit Court for the January, May and October terms—Justice Hagner.

Equity Court for the year 1888, commencing with the February term—Justice Cox.

Orphans' Court—Justice Cox.

District Court—Justice James.

Criminal Court, for the March, June and December terms, Justice Montgomery.

A second Circuit Court shall be held on the fourth Monday in January by Justice Merrick, in the western audience room of the south front.

Justice Hagner's court will be known as Division No. 1, and Justice Merrick's as No. 2.

The cases on the first half of the calendar will be tried in No. 2, and the others in No. 1.

The first twenty-six jurors drawn will serve in No. 1, and the next twenty-six in No. 2.

THE UNITED STATES SUPREME COURT.—As this court has adjourned during the holidays until Wednesday, January 4, 1888, there will be no opinions delivered until Monday, the 9th instant. This recess is no doubt as much enjoyed by the justices of the court as by the members of the bar from a distance, who come here to argue their cases orally, as it enables the latter to spend the Christmas holidays at their own homes.

ERROR IN TELEGRAPHIC MESSAGE.—The dropping of an important word in the transmission of a telegram is *prima facie* evidence of negligence on the part of the telegraph company, and will render the company liable in the absence of any evidence explaining the same. Ayer v. Western Union Tel. Co., 79 or 80 Me.

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SUPREME COURT OF THE UNITED STATES.

ABSTRACTS OF DECISIONS.

TRANSFER OF NATIONAL BANK STOCK—FEDERAL QUESTION—TRANSFERS IN BLANK AFTER FILING BLANK TRANSFER — LIABILITY OF PURCHASER AFTER BLANK TRANSFER—ACTION BY FIRST HOLDER AGAINST HIS TRANSFERREE.

Lessassier & Binder v. *Samuel H. Kennedy.*

In error to the Supreme Court of the State of Louisiana.

Forty shares of the capital stock of the Crescent City National Bank were on Feb. 24, 1873, sold to plaintiffs in error by the defendant. The transfer was made on the transfer book of the bank, leaving the name of the transferee blank according to the custom there.

On March 15, defendant sold them to one Adams, a responsible person, but at his request the name of Morris Dyer, an irresponsible person, was filled in the blank for tranferee's name on the transfer book, which had been formerly signed by plaintiffs in error. The bank being embarrassed closed on the 17th, and soon the Controller of the Currency appointed a receiver therefor. On August 1, 1873, the receiver brought suit against the shareholders under sec. 5151 Rev. Stats., to enforce their personal liability for debts of the bank. Kennedy was made a party as holder of said shares. He set up his sale to Adams in defence. On the hearing the bill was dismissed as to him. Then the receiver brought suit against Lessassier & Binder as owners of the stock at the time of the failure of the bank. They notified Kennedy that if they failed in the suit they would hold him for what they might be compelled to pay "on the stock which they had sold him Feb. 24, 1873. Judgment was rendered against them May 16, 1879, for $2,800, with 5 per cent. interest from July 23, 1874. They paid this judgment, and bring this suit against Kennedy to recover said payment. In their petition they allege that it was Kennedy's duty to have filled in his name in the blank on the transfer book, and that owing to his conduct in not doing so, he subjected them to a liability which was his, and not theirs; that his acts were in violation of his obligation, unlawful, illegal, and to their damage of the amount paid by them.

A motion is made to dismiss the writ of error for want of jurisdiction, on the ground that no Federal question was involved in the decision below.

Granting the motion to dismiss the court say: From this statement of the case the suit was not brought against Kennedy to enforce any liability of his under the National Banking Act; that was disposed of in the suit of the receiver against him for its enforcement. Neither do Lessassier & Binder claim under the receiver, nor are they seeking to enforce the liability of Kennedy as a shareholder. Their claim, and their only claim, against him is for his failure to insert his own name, or that of some other responsible person, in the blank which had been left by them in the transfer they signed on the books of the bank for the stock he had bought. His obligation to them, if any there is, grows out of his contract with them as a purchaser, and not out of the banking law. That presents no Federal question. There is nothing in that law which makes it his duty to save his assignors from harm by reason of their former ownership, or which required him to register his ownership for their protection.

Neither is it at all important that, in its opinion, the Supreme Court of the State expressed a doubt as to the correctnees of the judgment against Lessassier & Binder. That judgment, as it stood, was conclusive on that point, and if Kennedy had been liable to them at all, it would have been for the amount adjudged, because he had been called upon to defend if he desired to do so. He was discharged, not because the judgment was wrong, but because he had not, in the opinion of the court, been guilty of any neglect of duty towards those against whom it was rendered, which would make him liable to them therefor.

WAITE, C. J. Dec. 5, 1887.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

DUBOIS' APPEAL.

Patent Appeals, No. 83.

Decided October 13, 1887.
The CHIEF JUSTICE, and Justices HAGNER, JAMES and MERRICK sitting.

The statutes relating to patents do not provide for the granting of a patent for an article which is the necessary product of a machine previously patented.

Appeal from the Commissioner of Patents.

THE CASE is stated in the opinion.

R. MASON for appellant:

No one appeared for the Commissioner.

Mr. Justice HAGNER delivered the opinion of the court.

On the 24th of August, 1875, Frederick Q. DuBois obtained a patent for: 1. An improvement in the art of making lead traps for plumber's use: and 2. For the improved apparatus therein described, to be used in the manufacture of lead traps for plumber's use.

In March 8, 1878, he applied for a patent for a plumber's trap of soft metal, compressed and seamless, etc., as a new article of manufacture; being the same trap he had claimed was to be produced by the machine or apparatus described in his patent of August, 1875.

The application was rejected on the 13th of March, 1878, by the examiner; again, on the 22d of March, again on the 13th of April, 1878, and again on the 15th of February, 1886. In the last ruling the examiner states at large the grounds of his rejection: 1. That the Commissioner, and Judges Shipman and Wheeler, of the United States courts, had decided that the trap described was not

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patentable. He refers to the second reason in these terms:

"It is unnecessary to mention the numerous decisions which have been rendered of late years, to the effect that the extension of the monopoly, which would result from the granting of a patent for an article which was the necessary product of a machine previously patented, is not provided for by the statute, and should not be patented."

This decision, on appeal, was affirmed by the board of examiners in chief; and their ruling, in turn, was approved by the acting Commissioner.

We have examined carefully all the proceedings in the case, including the several careful arguments made before these successive tribunals, during a litigation of eight years, and that addressed to this court in the present hearing; but we have found no reason sufficient to induce us to overrule those decisions; and the ruling of the acting commissioner is, accordingly, affirmed.

FRANCIS A. WOOD ET AL.
v.
DISTRICT OF COLUMBIA ET AL.

AT LAW. No. 26,832.

Decided October 13, 1887.
The CHIEF JUSTICE, and Justices HAGNER, JAMES and MERRICK sitting.

1. Whenever an invalid tax is sought to be enforced, certiorari is the proper remedy to review the proceedings.
2. While the writ may be denied where the petitioner is shown to have been guilty of culpable laches in applying for it, yet when nothing appears to show that the petitioner by silence has inflicted injury upon others; or occasioned public or private inconvenience; or that others have acquired rights which will be impaired; and that as soon as assailed he complained, a hearing ought not to be refused by a denial of the writ.

This was a motion to quash forty-three writs of certiorari which had issued to the treasurer of the United States and the Commissioners of the District of Columbia, on the prayer of the respective petitioners alleging the invalidity of certain taxes assessed against their property. The writs commanded the respondents to certify to the court the papers and records of proceedings in each case. The motion to quash was certified to the general term to be there heard in the first instance.

BIRNEY & BIRNEY, for petitioners:

H. E. DAVIS, for the District.

Mr. Justice HAGNER delivered the opinion of the court.

Motion to quash forty-three writs of certiorari certified to be heard here in the first instance.

Five specific reasons are assigned by the attorney of the District, in support of the motion, two of which we will notice:

1. It is insisted that certiorari is not the proper form of remedy to be invoked by the petitioners.

We are of the opinion that this objection cannot be sustained. In Ewing v. St. Louis, 72 U. S., 5 Wall., 413, a bill in equity was filed to enjoin the collection of an assessment made by the city for benefits adjudged against the plaintiff from the opening of a street through his property. The supreme court held that equity could not grant relief in such a case. Referring to the charges of the bill the court says: "Of these grounds the principal are that the proceedings were taken without notice to the complainant, or any appearance by him; that the notice provided by law was not published as required; that no provision was made for compensation for the property taken; that no power to render the judgments was vested in the mayor by any Act of the Legislature, or could be vested in him by the city authorities by any clause of the city charter; and that the statutes under which the proceedings purported to have been taken were repealed before the proceedings were completed. These grounds are by the demurrer admitted to be true; and being true, no reason exists upon which to justify the interposition of a court of equity.

"If the statutes and ordinances under which the mayor undertook to act did not invest him with any authority to render the judgments against the complainant, the judgments were void, and could not cast a cloud upon his title, or impair any remedies at law provided for the protection of his property or the redress of trespass to it.

"On the other hand, if the statutes and ordinances invested the mayor with authority, when new streets in the city were to be opened, to render judgments for the amount of benefits assessed against the owners of adjoining property, and in this instance he failed to follow their provisions, or exceeded the jurisdiction they conferred, the remedy of the complainant was by *certiorari* at law, and not by bill in equity.

"With the proceedings and determination of inferior boards or tribunals of special jurisdiction, courts of equity will not interfere, unless it shall become necessary, to prevent a multiplicity of suits or irreparable injury, or unless the proceeding sought to be annulled or corrected is valid upon its face, and the alleged invalidity consists in matters to be established by extrinsic evidence. In other cases, the review and correction of the proceedings must be obtained by the writ of *certiorari*. This is the general and well established doctrine. Examples in which this is asserted are found in Mayor, etc., of Brooklyn, v. Meserole, 26 Wend., 132, and in Heywood v. Buffalo, 14 N. Y., 534, and in cases there cited."

The decision in Gaither v. Watkins, 1 Md., 6 Cent. Rep., 483, 66 Md., 577, cited on behalf of the District, recognizes this doctrine. The precedents in this jurisdiction referred to by the counsel of the petitioners, abundantly show the exercise of the power of review by our courts of the proceedings of inferior tribunals, in cases like the present; and we adhere to that practice.

2. It is insisted, however, that if the writ of *certiorari* can be resorted to in such cases as these, yet as that writ is granted only in the sound legal discretion of the courts, and cannot be demanded as matter of right—that the courts should not award it in the cases like the present,

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where the petitioners have been guilty of culpable *laches* in making their application.

There is no doubt of the correctness of the first proposition. It is distinctly affirmed in Ex parte Hitz, 111 U. S., 768, and in 66 Md., 577, and Cooley, Taxation, 530.

But the cases cited do not show that the petitioners here have been guilty of *laches* in such wise as to induce the court to refuse them an opportunity of urging their objections to the assessments complained of. The petitioners all declare that the proceedings were conducted throughout without any notice to them, as was exacted by the statute; and although the assessments are claimed to have been made many years ago, yet no certificates were issued until many years subsequently; and no attempt was made to enforce the collection of the certificates until a still more recent period.

If the courts of law are to apply in these proceedings at law the equitable defence of laches peculiarly belonging to courts of equity, they should also apply the reasons out of which the doctrine arises. Nothing appears, thus far, in these proceedings to show that the petitioners by culpable silence have inflicted injury upon others, or occasioned public or private inconvenience; or that others, thus lulled into hurtful security, have acquired rights which will now be impaired, by sustaining tardy objections to these assessments. They were under no such positive obligation to speak before they were attacked by an attempt to disturb their possession, as would enable us to ascribe to them such neglect as should disentitle them to receive a hearing from the court. According to their allegation, they complained as soon as they were assailed. Even if they had known of the assessments, that knowledge would not necessarily apprise them that the attempt would be made to collect the certificates subsequently issued. As to the effect of any culpable delay on their part, if such should be shown, we cannot now undertake to decide, although it may perhaps be fitly considered hereafter, in the further progress of the cases.

The other reasons assigned in support of the motions to quash would more properly be examined in the future. The two we have been considering appear to be the only objections properly examinable on this motion.

The motions to quash are overruled, and the cases are remanded to the circuit court.

MARYLAND COURT OF APPEALS.

CANTON ET AL. v. MCGRAW.

[November 18, 1887.]

EQUITY—PLEADING—PARTIES—BILL TO VACATE DEED.—In a bill to vacate a deed executed by a person since deceased, all persons who would have an interest in the property if the deed were vacated should be made parties, and a son of the grantor, who would have such an interest, is competent to file such a bill.

SAME—CHARGE OF FRAUD.—There is no rule of equity pleading requiring the pleader in charging fraud to set out the proof by which he expects to maintain the charge.

SAME—MULTIFARIOUSNESS—EQUITY RULE 33.—A bill prayed for the vacating of a deed, an account of rents and profits, and the removal of a trustee. Under Equity Rule 33, the bill may be dismissed for multifariousness so far as it prays for the removal of the trustee; but it is not multifarious for praying the vacating of the deed and an account of rents and profits.

EQUITY—LACHES.—Laches cannot be imputed to the complainant in this case, the bill to vacate the deed having been filed within three years after the date of the deed and about sixteen months after the death of the grantor.

EVIDENCE—ADMISSIONS IN LETTERS.—Certain letters held admissible as containing admissions of fraud.

EQUITY—PRACTICE—TESTIMONY BEFORE EXAMINER.—An examiner in equity must be present at the taking of testimony, but may have a clerk to write down the same.

SAME—FURTHER TESTIMONY—SUCCESSIVE EXAMINERS.—The orders of the court below as to further testimony and successive examiners approved.

Appeal from the Circuit Court of Baltimore City.

M. BANNON, J. J. GALLAGHER and F. C. COOK for appellants.

JAMES MCCOLGAN and T. C. RUDDELL for appellee.

Opinion by MILLER, J.—The principal question involved in this appeal is, whether that part of the decree appealed from which vacates and annuls the deed from James McGraw to his daughter, Mrs. Canton, is correct. But before considering that question, some preliminary matters must be disposed of.

1st. We entertain no doubt whatever as to the right of the complainant to file a bill to vacate this deed. He is a son of James McGraw, the grantor, who died about a year after the deed was executed, leaving a will. If the deed is vacated, he will be entitled under that will to an interest in the property embraced in the deed. Nor have we any doubt that he was right in making his brothers and sisters as well as Mrs. Canton, the grantee and her husband, parties defendant to the suit. These brothers and sisters will also all have an interest under their father's will in the property covered by the deed if it is vacated, and the bill would in fact have been defective for want of proper parties if they had not been made parties to it.

2d. We are equally clear in opinion that the averments in the original and supplemental bills are sufficient to let in all the direct legitimate proof by which this deed has been assailed. There is no rule of equity pleading which requires the pleader in charging fraud to set out the proof by which he expects to maintain the charge; and while the law requires the fraud to be proved by clear and satisfactory testimony, it allows a broad scope for the introduction of facts and circumstances bearing even remotely upon the question.

Mrs. Canton was executrix and trustee under the will of her father, as well as grantee in the deed, and the court below, after hearing the case on its merits, and having decided that the deed should be vacated, was of the opinion the bill was defective, because she was not made a party in those capacities as well as in her own right as grantee in the deed, the effect of setting aside the deed being to increase the property she would receive as executrix and trustee, and

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accordingly held the case over until the bill could be amended so as to make her a party in those capacities. The complainant then filed a petition reciting briefly the averments of the original and supplemental bills, and asking leave to amend the same by interlineation so as to make Mrs. Canton a party in the capacities specified. Upon this the court passed an order granting the leave to amend as prayed, and directing a subpœna, returnable in fifteen days, to issue to Mrs. Canton, and requiring her to answer the bills as executrix and trustee. After some difficulty and delay in the service of this summons, she appeared and answered the bills in these capacities. In this answer she reiterates and adopts the answers already filed by her husband and herself in their own right, and at the same time she objected to all the proof already taken, and claimed she was not bound thereby, because she was not originally made a party as executrix and trustee. She also specially excepted to the testimony of the complainant, upon the ground that he was an incompetent witness, inasmuch as she was now a party as executrix. The complainant then also excepted to the competency of the defendants upon the same ground. The court sustained the exceptions to the competency of the parties on both sides under the evidence act, and excluded so much of their testimony as had been given on their own offer, but refused to delay the passage of the decree, or to allow further evidence to be taken in the case, and overruled her objection to the other testimony as well as all other objections made either by herself or the other defendants to the immediate passage of the decree. Now, as to these proceedings, our opinion is:

1st. That the court was right in refusing to allow further testimony to be taken, and also in overruling all other objections to immediate action upon the case as it then stood. Mrs. Canton had ample opportunity, of which she availed herself abundantly, to take testimony in support of her title as grantee in the deed, and she needed none to sustain that of executrix and trustee, if the deed was set aside. She was in fact thus brought in as a party in order that the property covered by the deed about to be vacated might be devolved upon her as executrix and trustee under the will, and that her title to such property in these capacities might be formally adjudicated. As to the other defendants, their pecuniary interest was to have this property pass under the will, and not to Mrs. Canton absolutely, and in her own right under the deed. Such was unquestionably their legal interest, whatever may have been their feelings and sympathies in behalf of their sister. On their part, therefore, there could be no legal right or reason for delaying the passage of the decree.

2d. Whether the court was right in requiring this amendment to be made, and whether when made the court was right in excluding by reason thereof the testimony of the parties under the evidence act, are questions about which we need express no decided opinion, and for this reason: If the evidence be excluded the testimony in favor of the deed will be less strong and that against it much stronger. It would, therefore, be for the advantage of the appellants, and especially of Mrs. Canton, that this testimony should be in the case, and we have so considered it in reaching our conclusion upon the main question as to the validity of the deed.

There is a large volume of testimony in the record. The order directing it to be taken was issued in October, 1884, and it was not returned until May, 1886. The witnesses are numerous, and have been examined at great length; to one of them no less than four hundred and eighty-two cross-interrogatories were put, and to another three hundred and eight. A great deal of hearsay and irrelevant matter was introduced, to which we have paid no attention in making up our judgment, and it is needless therefore to consider in detail the many exceptions to portions of the testimony on this ground. Of the other exceptions to the admissibility of evidence only one is of sufficient importance to require notice. A number of letters which passed between John B. McGraw and Michael Canton (some of which were written by the former to Mrs. Canton) were obtained and offered in evidence by the complainant. The mode in which they were obtained cannot be too strongly condemned; but it does not render them inadmissible as evidence. They were written some time after the date of the deed, but the writers of them were parties to the suit, and were the two to whom, with Mrs. Canton, the testimony on the part of the complainant pointed as the chief perpetrators of the alleged fraud in regard to the deed. The objection to them chiefly relied on is that if offered as declarations of co-conspirators binding Mrs. Canton they are inadmissible, because the conspiracy, if there was any in fact, ended in the procurement of the deed, and they are therefore merely declarations as to past events. The court below sustained this objection and held the letters inadmissible for that purpose, but considered them pertinent and admissible for the purpose of showing the relations between the alleged conspirators and the manner in which they lived together after the transaction was completed. But according to our reading of these letters some of them contain important admissions in regard to the fraudulent obtention of this deed, and being admissions of parties to the suit, those portions of them which contain such admissions are for that reason admissible, and it is these admissions alone that we have considered.

Objections have also been made to the testimony, or some parts of it, upon the ground that it was irregularly and unlawfully taken. As to these objections all that need be said is:

1st. That there is nothing in the equity rules adopted by this court to prevent the examiner before whom the testimony is taken from having a clerk to write it down. No provision on this subject is made by these rules; and rule 57 expressly provides that all procedure not provided for by the foregoing rules shall remain to be regulated and governed by existing statutes and by the general rules and principles of equity pleading and practice as heretofore existing. By the Code, Article 16, Section 144, the right to have a clerk to write down the testimony in equity cases is recognized, and his *per diem* fixed. That statute is still in force. Of course

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the examiner must be present when the testimony is taken; but we find no evidence in this record that any testimony that was received and considered by the court below was taken by a clerk alone out of the presence of an examiner.

2d. We find no error in the court's order of January, 1885. The first order passed upon the application of the complainant in October, 1884, after the cause was at issue upon the amended and supplemental bill and answers thereto, granted leave to the parties in the usual form to take testimony before any one of the standing examiners. The complainant then took some testimony before Examiner Wright, who acted for a short time in place of Examiner Tidy, who was originally notified to take the testimony, but who was too sick to act. Mr. Tidy still continuing indisposed, the complainant made arrangements for continuing the taking of testimony before Examiner Stockbridge, and proceeded to take testimony before him. In December, 1884, the authority of Mr. Stockbridge to act was denied by a witness against whom he had issued an attachment to compel her appearance to testify. The complainant thereupon filed his petition, stating what had been done, and asking of the court authority to continue the taking of testimony before Mr. Stockbridge, and that the testimony heretofore taken might stand as if taken under the original order of October, 1884. Upon this petition the court passed the order in question on the 9th of January, 1885, ordering the testimony heretofore taken to stand as taken regularly before one of the examiners, and authorizing and directing Mr. Stockbridge to continue taking the testimony under the original order of October, 1884. In passing this order the court, in our opinion, violated no provision of the equity rules, nor any general rule of principle of equity practice. Moreover, at the taking of all the testimony prior to the passage of this order the solicitors of the appellant were present and cross-examined the witnesses.

It is further contended that the bill should be dismissed, upon the grounds of multifariousness and laches.

1st. The amended and supplemental bill is said to be multifarious, because it prays not only that the deed be vacated, but that Mrs. Canton may be removed from her trusteeship under the will, and may be also required to account for the rents and profits of the property she has held under the deed. But the decree appealed from dismisses the bill so far as it prays for her removal from the trust. This action of the court is expressly authorized by Equity Rule 33, which was adopted for the very purpose of relieving a bill from the objection of being multifarious, and to save it from being dismissed on that ground. As to the prayer for an account we are clearly of opinion it does not make the bill multifarious. A court of equity has undoubted jurisdiction to vacate a deed for fraud; and when a bill is filed for that purpose the court will, if it is vacated, proceed to do full and complete justice to all parties interested in the property. It will sell the property if necessary and distribute the proceeds, and will always see to it that it goes to the parties entitled to it. To require an account from the fraudulent grantee of the rents and profits during the time he has held the property under the fraudulent deed is clearly within the scope of the power and jurisdiction of the court in such cases.

2d. The defence of laches always depend upon the circumstances of each case. Here the bill was filed within less than three years after the date of the deed, and only about sixteen months after the death of the grantor. Under all the circumstances of the case disclosed by the record, we do not think laches can be imputed to the complainant in the assertion of his right.

Having thus disposed of all preliminary matters we deem of sufficient importance to notice, we come to the main question in the case: Has the complainant made good his charges against the validity of this deed? We have carefully read and considered the proof on this subject, relying upon none that is open to any valid objection, and rigidly excluding from our minds all extraneous and irrelevant matters found in the record. The testimony of the chief witnesses on either side is in hopeless and irreconcilable conflict on most important and material points, so that one or the other must be discredited. Upon the main question the learned judge of the circuit court (Judge Fisher) has prepared an able and elaborate opinion. In that opinion he says: "Fully appreciating the gravity of the litigation to the parties, and plainly sensible of the responsibilities resting upon myself, I have given to the case more time and more careful consideration than to any other argued before me." He reached the conclusion that the deed is invalid and should be vacated. After a like careful examination of the case we have reached the same conclusion, and are content to rest our affirmance of his decree on this point upon his opinion. Decree affirmed and cause remanded.—*Maryland Law Record.*

BORDER STATE P. B. A. v. HILLEARY AND WIFE.

[December 9, 1887.]

MORTGAGE—BUILDING ASSOCIATION—RELEASE.—Certain transactions held not to release a mortgage, but merely to reduce the mortgage debt.

USURIOUS INTEREST—RECOVERY—ACT 1876, CH. 358.—Under the Act 1876, ch. 358, no recovery can be had of usurious interest after the debt has been fully and *bona fide* paid; but usury paid may be recovered if any part of the debt remain unpaid.

Appeal from the Circuit Court of Baltimore City.

JAMES MCCOLGAN for appellant.

JAMES H. BARNES for appellees.

Opinion by ROBINSON, J.—This is a bill filed for the release of a mortgage. The facts are these: The appellant association advanced to the appellee, Hilleary, $1,040, being the par value of four shares of its stock held by him, and to secure the payment of the money thus advanced, Hilleary and his wife executed to the association a mortgage.

Hilleary from time to time continued to make bi-weekly payments of interest and dues, according to the terms of the mortgage, until the whole sum thus paid by him amounted to one-half at least of the mortgage. Such being the case, and not wishing to continue the payment

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of interest on the whole debt of $1,040, the secretary of the association advised him to have the mortgage released, and to retire two of the four shares and give a new mortgage on the same property for $520, being the sum due on the original mortgage, and being also the par value of the two remaining shares. Accordingly the mortgage was released, two of the shares of stock retired, and a new mortgage for the payment of $520 was executed. At the same time a check for $520 was drawn by the association, payable to the order of Hilleary, but this check was endorsed by him and then deposited by the association in bank to its credit. So not one dollar was at that time advanced to Hilleary. After its execution, he continued to pay the interest and dues on the second mortgage until the amount paid by him, added to the payment made on the original mortgage, exceeded the mortgage debt of $1,040, with interest thereon. Application was then made to the association to release the mortgage, but this was refused, on the ground that there was still a balance due on it by the appellees.

The auditor's account shows that the entire sum paid by Hilleary on the first and second mortgages exceeds the $1,040 advanced to him with interest, but the association contends that the first mortgage was paid and released at the time of the execution of the second, and that Hilleary is not, therefore, entitled to a rebate of the usurious interest paid by him on the first mortgage; and, further, that the second mortgage for the payment of $520 was given for a new loan of that amount by the association to him.

Now, if this be so, if the original mortgage debt was in fact paid, then the appellees are not entitled to a rebate for usurious interest, because the Act of 1876, ch. 358, provides that no recovery shall be had of usurious interest after the debt has been fully paid. The proof, however, does not sustain the appellant's contention. On the contrary, it shows that although the original mortagage was in fact released, only half of it had been paid, and that the second mortgage, instead of being executed to secure a new loan of $520, was in effect a mortgage to secure the balance due on the first, and based, too, on the remaining shares of stock in the hands of Hilleary, the par value of which was $520.

When the Act of 1876 speaks of the payment of the debt, it means, as was said in Hay's Case, 61 Md., 597, a *bona fide*, and not a sham payment. The mere fact of handing a check to Hilleary for $520, and taking it back in the next breath and depositing it in bank to the credit of the association, is not a loan of money to him. The object of this formal ceremony was no doubt to give to the transaction the appearance of a new loan. The effect of it, however, was merely to reduce the mortgage indebtedness from $1,040 as it stood when the first mortgage was made, to $520, for which the second mortgage was given. It was, after all, part of the same old debt. This being so, the appellee, Hilleary, is entitled to a rebate for the usurious interest paid on the first mortgage, because the Act of 1876 allows one to recover all usury paid so long as any part of the debt remains unpaid. As the auditor's account shows that Hilleary has in fact overpaid the original mortgage debt of $1,040 and interest thereon, the order below must be affirmed.—*Maryland Law Record.*

NOTE.—USURY AS A CAUSE OF ACTION OR DEFENCE.—By the Revised Statutes of the United States, relating to the District of Columbia, secs. 715, 716, it is declared in substance: That if any person, etc., upon any contract shall directly or indirectly receive any greater amount of interest, than is provided for in the Act, . . it shall be lawful for the person . . paying the same to sue for and recover all interest paid upon such contract . . from the person . . . receiving such unlawful interest, suit to be brought within one year. It has been decided by the United States Supreme Court, that where a statute similar to ours prescribes a legal rate of interest, and forbids the taking of a higher rate, under pain of forfeiture of entire interest, etc., that the statutory action is the *exclusive* remedy. 111 U. S. Rep., 31. Walsh v. Mayer. And that the usurious interest actually paid cannot be applied to the discharge of the principal. See also 111 U. S. Rep., 197, Stevens v. The Bank; 98 U. S. Rep., 555, Barnet v. National Bank, and 104 U. S. Rep., 52, Driesbach v. National Bank. If this right of action is not asserted within the permitted period, it ceases to exist and cannot be claimed or enforced in any form.

And the common law right to reclaim or set off usurious interest paid does not remain to the party paying the same. 112 U. S. Rep., 483, Carter v. Carusi; 2 Mackey, D. C. Rep., 110, Kendall v. Vanderlip. When an agent, who is authorized by his principal to lend money for lawful interest, exacts for his own benefit more than the legal rate, the loan is not thereby rendered usurious. 116 U. S. Rep., 98, Call v. Palmer; 121 U. S. Rep., 106, Grant v. Phœnix Ins. Co.

Where there is nothing upon the face of the papers to show that the transaction was a loan of money from one party to the other, there can be no usury. 122 U. S. Rep., 487, Struthers v. Drexel. W. S. A.

OTT v. KAUFMAN, ET AL.

[December 9, 1887.]

PERSONAL ACTION — ASSAULT AND BATTERY—ABATEMENT ON DEATH OF DEFENDANT.—Under Maryland Code, Article 2, Sec. 1, an action by a husband founded on an assault and battery on his wife, by which he lost her services, abates on the death of the defendant, without regard to the nature of the damages claimed.

Cregin's case, 83 N. Y., 595, distinguished.

COMMON LAW RULES.—The common law rules in regard to the abatement of actions on the death of one of the parties, stated.

Appeal from the Court of Common Pleas.

D'ARCY PAUL, for appellant.

W. PINKNEY WHYTE, for appellees.

Opinion by ROBINSON, J.—This is an action by a husband to recover damages for an assault and battery on his wife, *per quod*, he lost her services, and was obliged to expend money for medical and other attendance upon her.

Pending the suit the defendant died, and the

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question is whether the action survives against his executrix. And this depends upon the construction of Section 1, Article 2, of the Code, which provides that personal actions of every kind, except actions for personal injuries and slander, shall survive against the executor or administrator of the testator or intestate. Actions for personal injuries are thus expressly exempted from the saving clause of the statute, and this would seem to be conclusive as to the question now before us. The argument, however, is that the plaintiff is not seeking to recover damages for the personal injury to his wife, but consequential damages, for the loss of her services, etc. This is true; but the injury to his wife is, after all, the foundation of the action, and the question whether the action survives on the death of the defendant depends upon the nature of the action itself, and not upon the character of the damages claimed. At common law personal actions of every kind abated on the death of the sole plaintiff or sole defendant, and if the action was founded on contract, a new action would lie against the executor or administrator. But if the action was founded on a tort, for a wrong committed by the defendant, it did not survive, the maxim being "*actio personalis moritur cum persona*"; (Hambly v. Trott, Cowp., 371; 1 Saunders, 216 a; Wentworth v. Cook, Adm., 2 Per. & Dav., 257.)

In the language of Lord Mansfield, the wrong and the wrong-doer were buried together.

So at common law an action would lie in the name of the husband and wife for the personal injury to the wife, and another action in the name of the husband to recover consequential damages for the loss of her services, but neither of these actions survived on the death of the defendant. And when the Code says an action for a personal injury shall not survive against the administrator or executor of the defendant, it means an action founded on a personal injury, without regard to the nature of the damages claimed.

Now Cregins' Case (83 N. Y., 595), was based upon the New York Statute, which provides that actions for wrongs done to the "property," "rights," and "interests" of another shall survive, and not abate by the death of the plaintiff or defendant. And in that case where the wife was injured through the negligence of the defendant company, the court held that the action brought by the husband to recover damages by way of compensation for the loss of his wife's services, and expenses incurred for medical attendance, did not abate on the death of the plaintiff. The wife's services, say the court, were of a pecuniary value to the husband, and a wrong done by which he was deprived of such services was a wrong done to his "rights" and "interests" within the meaning of the statute. There is no such language however as "wrongs done to the rights and interests" of another in our Code, and the decision in that case cannot be accepted as an authority in the construction of our statute. Judgment affirmed.—*Maryland Law Record.*

PATENTS--PUBLIC USE.—The public use for four years previous to the application for a patent, renders such patent, if issued, invalid. Smith v. Sprague, U. S. S. C., Nov. 14, 1887; 8 S. C. Rep., 122.

Massachusetts Supreme Judicial Court.

E. J. FREEMAN v. L. T. FOSS.

Statute of frauds, a contract which is within cannot be enforced; nor can defendant avail himself of such a contract to avoid liability upon a *quantum meruit.*

On defendant's exception.

This was an action of contract brought to recover for the services of Fred. Freeman, minor son of the plaintiff. The court found, upon the evidence, the facts to be substantially as follows:

The plaintiff agreed that his son should go to work for two years in the dental office of the defendant, and receive instruction in dentistry. The defendant thereupon agreed to take him into his office, instruct him, furnish him with books and the use of tools, stipulating that the defendant should so remain in his office working and gaining instruction for the space of two years, when he would pay to the authorities of the Boston Dental College the tuition fees of said Freeman through that institution. That on the 31st day of March, 1884, said Fred Freeman went into the office and remained there till March 18, 1885, when, by reason of illness, he left, and remained away until October 5, 1885, when he returned, and remained until January 4, 1886, when he expressed his unwillingness and inability to remain, and declined to remain longer, under the original agreement, but requested that he be paid the sum of $3 per week thereafterward. This was agreed to, and thereafterward for some weeks that sum was paid to him. None of the agreements were in writing. The plaintiff claimed that by the Statute of Frauds the contract set up in the answer (said contract not being in writing) could not be used in evidence in defence to this action. The court permitted the evidence to be heard, but ruled that the plaintiff could maintain his action upon *quantum meruit*, notwithstanding said contract, and that by reason of the Statute of Frauds the defendant could not set up the contract in defence of this action; to which the defendant excepted, and asked the court to rule that, upon the facts proved, the contract was executed on both sides up to the time of the new agreement to pay $3 per week for services, January 4, 1886, and that *quantum meruit* could not be maintained when the plaintiff had received from the defendant, on January 4, 1886, all the considerations due and payable at that time under the original contract for services theretofore performed. The court refused so to rule, and found for the plaintiff.

Defendant excepted to the ruling and refusal to rule, and alleged exceptions.

CHARLES W. BARTLETT & GAGE, for defendant:

The Statute of Frauds is to be strictly construed, and the party objecting to the use in evidence of a contract as being within the statute must bring such contract clearly within it.

If the special contract in this case, otherwise within the statute, was sufficiently performed and executed, then it was competent and admissible for the defendant.

Sufficient part-performance is enough. Raw-

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son v. Bell, 46 Ga., 19; Kosser v. Harris, 48 Ga., 512.

The performance in this case was more than any partial performance.

A contract under which the considerations moving from the respective parties are concurrent, and which is fully executed so far as it goes, so far as the parties act under and elect to receive and accept the mutual benefits of it, is believed on principle to be taken out of the statute as a "fully executed" contract. The closing portion of the court's language in King v. Welcome, 5 Gray, 41, confirms the position here taken:

"If a person enters into a verbal contract to labor for more than one year, and quits before the end of the term without a sufficient legal excuse, and the other party was willing to perform on his part, the former can recover nothing for the services rendered." Swanzey v. Moore, 22 Ill., 63; Mack v. Bragg, 30 Vt., 571.

The Statute of Frauds must not be used to work a fraud.

C. P. WESTON for plaintiff.

The question presented by this bill of exceptions was settled in King v. Welcome, 5 Gray, 41—a case parallel to the one at bar in every essential particular.

This decision has been cited and approved in Williams v. Bemis, 108 Mass., 93; Russell v. Barry, 115 Mass., 303.

The following cases and authorities are equally clear to the same effect: Comes v. Lamson, 16 Conn., 246; Bernier v. Cabot Mfg. Co., 71 Me., 506; Browne, Fr., sec. 118; Wood, Fr., sec. 276.

The ruling requested by the defendant was rightly refused.

It asked for a ruling, as a matter of law, upon what was a question of fact, and assumed the existence of facts not proved. Salomon v. Hathaway, 126 Mass., 484; Stone v. Sanborn, 104 Mass., 326; Clough v. Whitcomb, 105 Mass., 485.

The first half of the request was for a ruling that was immaterial to the issue; and the latter half was covered by the ruling already made.

These exceptions were evidently intended for delay, and that should be overruled with double costs.

KNOWLTON, J., delivered the opinion of the court:

The defendant seeks to avoid liability for services of the plaintiff's son, by showing that they were rendered under an express contract, and that he did all that he agreed to do, so long as the boy remained in his service. The contract which he sets up was within the Statute of Frauds; it was entire and indivisible, and was not fully performed by either party. A large part of the consideration for the plaintiff's agreement was not payable by the defendant until after the end of the term of service, and no part of it was applicable to any particular portion of the term. As the plaintiff could not have enforced this contract against the defendant, so the defendant cannot avail himself of it to avoid liability upon a *quantum meruit*.

This case cannot be distinguished from King v. Welcome, 5 Gray, 41. See also Bernier v. Cabot Mfg. Co., 71 Me., 506; Comes v. Lamson, 16 Conn., 246.

Exceptions overruled.—*New England Reporter.*

REMOVAL OF ACTIONS.

UNITED STATES CIRCUIT COURT.

Charles L. Weller, as receiver, &c., against J. B. Pace Tobacco Company *et al.*

REYNOLDS & HARRISON for plaintiff.

NORTH, WARD & WAGSTAFF and WETMORE & JENNER for defendants.

LACOMBE, J.—The plaintiff, a resident and citizen of California, is, under decree of a California court, the receiver of the late firm of Esberg, Bachman & Co. All the defendants are citizens and residents of New York.

The firm of which plaintiff is receiver have held and own 273 shares of stock of the "J. B. Pace Tobacco Company." The original certificate of stock is now held by plaintiff with an assignment and power of attorney from the assignor. He brought this action in the State court against the company as sole defendant to compel the transfer of these shares upon its books, and the issuing of a new certificate to himself as receiver. The assignment was made in October, 1885, and the suit was begun in 1886. After a trial, but before judgment was entered, the defendant, Demuth & Co., applied to the Court as intervenors, and on their motion the trial was set aside and plaintiff ordered to bring them in. Thereafter he amended his summons and complaint, making Demuth & Co. and Scholle Brothers co-defendants with the company. The relation of these latter defendants to the subject-matter of the controversy is as follows:

Subsequently to the assignment to plaintiff, separate attachments were sued out by the defendant firms against two of the plaintiff's assignors and levied on the stock by filing notices with the company. Demuth & Co. prosecuted their suit to judgment and bought in the interest of defendants therein when the stock was sold by the sheriff under execution. Subsequently, Demuth & Co. brought an action in the Supreme Court of the State to compel the J. B. Pace Company to transfer the stock to them on the books of the company. They obtained judgments therein, the transfer has been made and certificates thereof issued to them by the company.

The defendants Demuth & Co., and Scholle Brothers have removed the suit into this court and a motion is now made by the plaintiff to remand the same. The case is governed by the Act of March, 1887, which was passed before the intervenors appeared.

The second clause of the second section of this act (which deals with suits not concerned with Federal questions or the conflicting grants of different States), has materially changed the law permitting removals. The clause is as follows: "Any other suit of a civil nature, at law or in equity, of which the Circuit Courts of the United States are given jurisdiction by the preceding section (i. e., in which there shall be a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars), and which are now pending or which may hereafter be brought in any State court may be removed into the Circuit Court of the United States for the pro-

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per district by the defendant or defendants therein, being non-residents of that State." Prior to the passage of this act, removal could be had in this class of cases by either plaintiff or defendant and irrespective of residence. As all the defendants in this suit are residents of New York this clause gives them no right to a removal.

It is claimed by them, however, that the defendants other than the company may remove under the next succeeding clause of the act, which is as follows: "And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district."

Whether or not the defendant who may move under this clause must be a non-resident of the State in whose court he is sued, need not be determined on this motion. However it may be interpreted, it certainly was never intended to provide for precisely the same class of suits as are already covered by the second clause of the section. The portion of the section last quoted (which, with a single change, is textually the same as the last clause of section 2 in the Removal Act of 1875), is in effect a saving clause. When upon arranging parties to any suit according to their interests, citizens of the same State are found on both sides of a litigation, a removal cannot ordinarily be had, because, under the decisions, the controversy (or controversary) is not between citizens of different States. The effect of the clause last quoted is to provide that in those cases a defendant or defendants may nevertheless remove, upon showing that there is in the suit a controversy which is wholly between such defendant or defendants on the one side, and citizens of other States on the other. Under the decisions, moreover, this "controversy in a suit" must be separable; that is to say, there must be, in such suit, a separate and distinct cause of action, and the case must be one capable of separation into parts. The clause last quoted has been many times considered by the Supreme Court; but its decisions will be searched in vain for a single instance where it has been applied to a case in which all the plaintiffs are citizens of one State, and all the defendants citizens of another.

Barney v. Latham, 103 U. S., 205; Blake v. McKim, 103 U. S., 336; Harter v. Kernochan, 103 U. S., 562; Hyde v Ruble, 104 U. S., 407; Corbin v. Van Brunt, 105 U. S., 576; Fraser v. Jennison, 106 U. S., 191; Winchester v. Loud, 108 U. S., 130; Shinwald v. Lewis, 108 U. S., 158; Cable v. Ellis, 110 U. S., 389; Ayers v. Wiswall, 112 U. S., 187; Louisville & N. R. R. v. Ide, 114 U. S., 52; St. Louis & San F. R. R. v. Wilson, 114 U. S., 60; Pirie v. Tvedt, 115 U. S., 41; Crump v. Thurber, 115 U. S., 56; Starin v. New York, 115 U. S., 248: Sloane v. Anderson, 117 U. S., 275; Fidelity Ins. v. Huntington, 117 U. S., 280; Rand v. Walker, 117 U. S., 340; Core v. Vinal, 117 U. S., 347; Plymouth Mining Co. v. Amador Canal Co., 118 U. S., 264; Little v. Giles, 118 U. S., 596; Brook v. Clark, 119 U. S., 502; Laidley v. Huntington, 121 U. S., 179; Texas Trans. Co. v. Seligman, 122 U. S., 519; Thorn Wire H. Co. v. Fuller, 122 U. S., 535.)

The suit in this case is clearly within the class covered by the second clause, as a suit in which there is a controversy between citizens of different States. And even if the citizenship of the parties were such as to make the provisions of the third clause of the Act of 1887 applicable, the suit does not under the decision, present separate and distinct causes of action, and is not one capable of separation into parts.—*The Daily Register, Dec.* 31, 1887.

ASPINWALL MANUF'G CO. v. GILL.

(Circuit Court, D. New Jersey.)

PATENTS FOR INVENTIONS—LICENSE—INJUNCTION.—Where it appears that a defendant has a licence from the inventor and patentee to make, use, and vend 100 patent potato diggers, no injunction will be decreed to restrain the exercise of the licence until he has fully enjoyed it, and where it appeared that defendant, under such license, had only made 50 machines, the injunction should be denied.

On bill in equity. On digger patents.

FRANCIS FORBES, for complainant.

F. C. LOWTHORP, JR., for defendant.

BRADLEY, J. The bill in this case was filed to restrain the infringement of two certain patents granted to L. Augustus Aspinwall,—one dated February 3, 1880, and numbered 224,123, and the other dated September 19, 1882, and numbered 264,603,—both for improvements in potato diggers, and both assigned to the complainant by a deed bearing date February 24, 1883. The bill charges the defendants with infringement of the said patents, and prays for a decree for profits and damages. The defences set up in the answer are—First, a license; and, secondly, an assignment.

The license claimed is the same as that which was set up in the suit on the planter patent (just decided); it being claimed under the same agreement, which provided for the manufacture of 100 planter machines and 100 digger machines. I held in that case that the defendants had exhausted the license for the manufacture of planters before the commencement of the suit, and had infringed the patents sued on by manufacturing in excess of the license. In the present case this has not been done. The defendants have not manufactured, all told, but 40 potato diggers of the 100 which they were authorized to manufacture. According to the views expressed in the other case, therefore, the defendants are not amenable to a suit for infringement of the digger patents. They went to large expense in getting out such machines as they did manufacture, and are entitled to a reimbursement of those expenditures from the proceeds of machines to be sold; and, as the said Aspinwall has interposed every possible obstacle in the way of their disposing of machines, it cannot be justly contended that their licence will expire until they have made their full complement of 100 machines.

This disposes of the present case, and it is unnecessary to enter upon the consideration of the other defence, which is much the same as the second defence in the planter case, with the exception that the instruments called assign-

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ments of the digger only grant the right to make, use, and vend (which is a mere license), and only grant use of future improvements for the State of New Jersey. What this limited right may amount to, should the new digger machines be held to be mere improvements on the old machines, it is unnecessary, as before said, to consider at this time. The license is a sufficient defence to the present bill.

The bill is therefore dismissed, with costs.—*Federal Reporter.*

THE OLDEST PATENT ON RECORD.—An application was made at the U. S. Patent Office for a patent on a sort of paddle or spade attachment to the end of a gun, having a sharp point, and which, it was claimed, would be serviceable in digging holes in the ground, throwing up entrenchments, &c.

The examiner to whom the application was referred happened to be an old and close reader of the Bible, as was shown by his returning the application indorsed: "Rejected, not patentable. See Deuteronomy, XXIII, 13. By reference to the text named, it will be seen that the invention alluded to is of rather ancient date, and is probably the oldest patent on record.

Iowa Supreme Court Abstract.

PARTY WALL—LIABILITY OF GRANTEE TO PAY PROPORTION OF COST.—The question presented by the case for our determination is this: When a party wall is built equally upon the lots of adjoining owners by one of them, and is afterward used for a building erected by his neighbor, who does not pay for the part of the value thereof as required by law, and conveys the lot to one having full notice of the facts, is such purchaser liable to his neighbor in an action to recover half the cost of the party wall? We think he is. The defendant's grantor, by using the party wall, becomes liable for half of its cost. She had the right to make it a common wall by paying half its appraised value. Code, sec. 2020. It follows that when she used the wall, she assumed to pay half of its value, as required by law. Her obligation to pay is raised by the statute; and plaintiff's right to recover is based upon this obligation. Her grantee, having full knowledge of the facts, stands in her shoes. He will not be heard in a court of law to deny his obligation to pay for the wall, the full benefit of which he enjoys, having notice that it has not been paid for. The right to use a party wall is a right running with the land. Thomson v. Curtis, 28 Iowa, 229. That right is dependent upon payment of one-half of its value. But defendant acquired no such right from his grantor for the reason that she had not paid for the wall. But he uses the wall, and for himself becomes liable, by reason of that use, to pay for it just as his grantor was liable. This liability is based upon the benefit he receives from the use of the wall, which was erected with his neighbor's money, and the full notice he possesses, that his grantor had not paid for the wall. He having such notice, stands in the shoes of his grantor, and is liable just as she would be had she not conveyed the land. He is to be regarded as liable to plaintiff by reason of his appropriation of the wall, and his notice that it has not been paid for. Pew v. Buchanan. Opinion by Beck, J.

WANTED.

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THE COURTS.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Equity Calendar for January, 1888.

1. Bohrer v. Otterback.
2. Droop v. Metzerott.
3. Spalding v. Dist. of Col.
4. Smith v. Rauterberg.
5. Ryder v. Diggs.
6. U. S. v. Hill.
7. Windsor v. Clarke.
8. Deacon v. Mason.
9. Kuhn v. Franks.
10. James v. Washington Casino Association.
10. Conley v. Nailor.
12. Ament v. Karr.
13. Detweiler v. Detweiler.
14. Hurst v. Hurst.
15. McStay v. McStay.
16. Newton v. McLean.
17. Robeson v. Niles.
18. Duff v. Baden.
19. Dainese v. Kendall.
20. Cox v. Cox.
21. Strong v. Shearman.
22. Davis v. Davis.
23. Talbot v. Talbot.
24. Walsh v. Walsh.
25. Starr v. Treackle.
26. Gibbons v. Duley.
27. Tate v. Olmstead.
28. Fegan v. Fegan.
29. Bramhall v. Morrison.
30. Holladay v. Middleton.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GENERAL TERM.

January 3.

George B. McClellis, of Indianapolis, was admitted to the bar.

George T. Raub v. James L. Barbour. Judgment below reversed and cause remanded.

F. D. Stephenson v. F. D. Conger. Re-argument allowed.

IN EQUITY.—New Suits.

December 28.

10932. John O. Miner v. Amelia Miner. For divorce. Com. sol., T. H. Fitman.

December 30.

10934. Thomas H. Barron et al. v. Charles Fallensbee. To enforce mechanic's lien. Com. sol., J. J. Darlington.

10935. John P. Larguey v. Michael Hines. To dissolve copartnership, for account and receiver. Com. sols., Birney & Birney.

10936. Woodbury Blair, trustee of John H. Aulick, v. Mary G. Niles, adm'x c. t. a. of S. V. Niles. For transfer of balance of decedent's estate to complainant. Com. sols., Davidge and Blair.

10937. Emma J. Walker v. Samuel H. Walker. For divorce. Com. sol., D. E. Cahill.

December 31.

10938. Henrietta Richards et al. v. John F. Forsythe et al. Com. sol., L. Tobriner.

10939. Frank L. Hanvey et al. v. Cornelia I. Schultz. Com. sol., Chapin Browne.

10940. Elizabeth A. Brown v. Mills Dean et al. To restrain suit at law. Com. sols., Abert and Williamson.

CIRCUIT COURT.—New Suits at Law.

December 28.

28339. Gutwillig Bros. v. Earnest D. Mayer et al. Account, $361.42. Plffs atty, L. Tobriner.

28340. Henerette Richard et al. v. J. F. Forsyth. Judgment of Justice Walter, $75. Plffs atty, Same.

28341. Same v. Same. Judgment of Justice Walter, $50. Plffs atty, Same.

28342. Same v. Same. Judgment of Justice Walter, $62.72. Plffs atty, Same.

December 30.

28343. Don L. Roseberry v. George A. Wright. Note, $130. Plffs atty, A. K. Browne.

28344. Charles C. Leachman v. Edw. M. Mix, adm'r of Alice W. Mix, dec'd. Note, $250. Plffs atty, L. C. Williamson.

28345. Herman Danzig et al. v. Earnest D. Mayer et al. Account, $1,472.95. Plffs atty, L. Tobriner.

28346. L. R. Geisenberger et al. v. Earnest D. Mayer et al. Acc't, $220.50. Plffs atty, L. Tobriner.

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December 31.

28347. A. Rossman v. Same. Acc't, $1,065.50. Pltf's atty, Wm. A. Cook.

PROBATE COURT.—Justice Merrick.

December 30.

Estate Mary A. Roth. Will filed.
Estate Michael McAllister. Will filed.
Estate Charles W. Seaton. Inventory of personalty filed, amounting to $32,202.05.
Estate Charles L. Bailey. Inventory of personalty filed, amounting to $4,650.
Estate Elizabeth L. Foller. Inventory of personalty filed, amounting to $2,301.07.

Rule of Court.

RULE 20 * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

Mary C. Lane et al. v. Mahaly Crawford et al. } No. 10,924. Docket.

On motion of the plaintiffs, by Mr. James H. Smith, their solicitor, it is ordered that the defendants, **William A. Barnacio** and **Carrie Smith**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to appoint a trustee under a deed of trust described in the proceedings in this cause, in place of Jonathan W. Barnaclo, "deceased," empowering him to release the real estate described therein, the debt secured thereunder having been paid.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
1 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 4th, 1888.

In the case of Anna M. Maulsby and Ida Corson, Executrices of **George Maulsby**, deceased, the Executrices aforesaid have, with the approval of the Court, appointed Friday, the 10th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

1 Test. DORSEY CLAGETT, Register of Wills.
No. 2504. Ad. D. 13. M. ASHFORD, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 3d, 1888.

In the case of Louisa V. Robinson, Administratrix of **David F. Robinson**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney, duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

1 Test: DORSEY CLAGETT, Register of Wills.
No. 2559. Ad. D. 13. C. M. & H. S. MATTHEWS, Proctors

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

Eliza E. P. Frankland v. Henry G. Frankland. } No. 10,831. Equity Docket 27.

On motion of the plaintiff, by Mr. James P. Tustin, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the ground of cruelty, desertion, non-support, and for custody of child.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
1 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary P. Smith et al. v. Edward Hesslegrave et al. } 10,739. Eq. Doc. 27.

Ordered, this 3d day of January, A. D. 1888, that the sale made and reported by R. P. Jackson, trustee in the above cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 6th day of February next.

Provided a copy of this order be inserted in the Law Reporter once a week for three weeks before the said day.

The report states the amount of sales to be 4,675 dollars.

WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
1 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Edward Bennett**, late of the District of Colmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of December, 1887.

her
1 MARY M. ⋈ BENNETT, Adm'x c. t. a.,
mark.
1624 10th street n. w.

No. 2912. Ad. D. 13. C. H. CRAGIN, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William H. Brown**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of December next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 29th day of December, 1887.

her
1 MARY E. ⋈ BROWN, Ex'x, 410 D st. s. e.
mark.

No. 2900. Ad. D. 13. DAN'L O'C. CALLAGHAN, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of December, 1887.

Albert Gleason et al. v. Cornelia Priscilla Luce et al. } No. 10,847. Equity Docket 27.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, **Cornelia Priscilla Luce, Bleecker Luce, Charlotte E. Luce, Sarah B. Cooke** and **Charles M. Cooke**, her husband, **William Luce, Margaret P. Rector** and **Elias Rector**, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree to direct defendants to make conveyance to complainants of all the legal interest or estate in and to parts of original lots one (1) and fifteen (15), in square two hundred and twenty-two (222), in the city of Washington, District of Columbia, which may have passed to them or any of them, under or by the will of John B. Luce, deceased, or descended to them or any of them as his heirs-at-law.

By the Court. WM. M. MERRICK, Justice, &c.
True Copy. Test: R. J. MEIGS, Clerk, &c.
52 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term as a District Court of the United States.

The United States
v.
The Chesapeake and Ohio Canal Co. and others. } No. 344.

Upon motion of the Attorney of the United States, and consideration of the petition in this case, seeking, on behalf of the United States, the condemnation (1) of the land upon which rests all of the northern abutment of the Aqueduct Bridge, in Georgetown, D. C. (except the wing walls thereof), including the foundations of the piers of said abutment and the land over which the spans or arches thereof are constructed; (2) of a right of way forty-nine and thirty-seven hundredths (49.37) feet wide over the Chesapeake and Ohio Canal from the northern face of said abutment to the north bank of said Canal; and (3) of a parcel of land on the north side of said Canal, opposite said abutment, being part of lot numbered seven (7), in Peter, Beatty, Threlkeld and Deakin's addition to Georgetown, beginning for the same at the end of ten and seven-tenths (10.7) feet measured south on the west line of Lingan street from the south line of Bridge street; thence west with the west line of Lingan street ten and seven tenths (10.7) feet, to Bridge street; thence west by and with the south line of Bridge street thirty-two (32) feet; and thence in a straight line to the place of beginning: It is this 16th day of December, 1887, ordered that all persons, firms and bodies corporate or politic having or claiming to have any right, title or interest in the land or water that may be affected by this proceeding, or any part thereof, or any claim to the damages, if any, which may be awarded in this proceeding, as compensation for said land, or any part thereof, or for said right of way, or any part thereof, be and they are hereby required to answer the said petition in writing, by filing in this Court a statement specifically setting up such right, title, interest or claim, on or before the ninth day of January, 1889; and it is further ordered that all such claims not filed on or before said day shall be forever barred as against the United States.

Provided that a copy of this order shall be published in the meantime at least fourteen times in the Evening Star, a daily newspaper published in this city of Washington, and at least twice in the Washington Law Reporter.

CHARLES P. JAMES, Justice,
Holding District Court of U. S.

A true copy. Test: R. J. MEIGS, Clerk.
51 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Anna M. Bagaley
versus
Waterman P. Bagaley. } No. 10,854. Equity.

The Marshal having made return that the defendant is "Not to be found," on motion of the plaintiff, by Earle & Pugh, her solicitors, it is ordered that the defendant, Waterman P. Bagaley, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the defendant, upon the grounds and reason stated in the bill, which are statutory causes of divorce.

By the Court. WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
50 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 9th, 1887.

In the case of Elizabeth M. Ricker, Administratrix of Gustavus Ricker, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 6th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter prevoius to the said day.

50 Test. DORSEY CLAGETT, Register of Wills.
No. 2498. Ad. D. 13. KENNEDY & SHELLABARGER, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 16th, 1887.

In the case of James W. Sinclair, Executor of Richard Crult, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 13th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

51 Test. DORSEY CLAGETT, Register of Wills.
No. 2534. Ad. D. 13. EDWARDS & BARNARD, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 16th, 1887.

In the matter of the Orphan Children of Martha R. Baker, late of Washington, D. C., deceased.

Application for Letters of Guardianship of the minor children of the said deceased has this day been made by Charles J. Columbus.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of January, 1888, next, at 12 o'clock m., to show cause why the said petitioner should not be appointed guardian of said children as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
51 Test: DORSEY CLAGETT, Register of Wills.
RICHARDSON and ELLIOT, Proctors.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles L. Bailey, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1887.
51 ROBERT L. BAILEY, Adm'r,
F bet. 14th & 15th sts. n. w.
J. CARTER MARBURY, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of December, 1887.

Anna Abell
v.
James N. Abell. } No. 10,865. Equity.

On motion of the plaintiff, by S. A. COX, her solicitor, it is ordered, that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter, and the rule in all other respects complied with.

The object of this suit is to procure a decree of divorce from the defendant for adultery and cruelty.

WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
50 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Susan Jane Young, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of December, 1887.
51 JAS. A. SUIT, Adm'r, 1732 12th n. w.
No. 2907. Ad. D. 13. R. W. MCPHERSON, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

December 19th, 1887.

In the case of Josephine Stewart, Administratrix of **William McClure Stewart**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

52 Test. DORSEY CLAGETT, Register of Wills.

No. 2259. Ad. D. 12. IRVING WILLIAMSON, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William E. Burris et al. v. **George W. Thecker, jr.** } 10,788. Equity Docket 27.

Upon consideration of the trustee's report of sale, it is by the Court, this 22d day of December, A. D. 1887, ordered, adjudged and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown to the Court on or before the 24th day of January next.

Provided a copy of this order be published according to the usual rules.

* * * * * * * * * * * *

WM. M. MERRICK, *A. J.*

A true copy. Test: R. J. MEIGS, Clerk, &c.

52 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The 17th day of December, 1887.

Laura J. Herron v. **Charles Herron.** } No. 10,879. Docket 27.

On motion of the plaintiff, by Mr. Chas. S. Moore, her solicitor, it is ordered that the defendant, **Charles Herron** (for whom a summons has been duly issued and returned "Not to be found"), cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure a divorce a vin. mat. for desertion.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test. R. J. MEIGS, Clerk, &c.

51 By H. W HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rebecca Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December, 1887.

51 JANE CARROLL, Ex'x, 327 E. Capitol st.

No. 2910. Ad. D. 13. GEO. F. APPLEBY, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of December, 1887.

Bartow L. Walker et al. v. **Augustus Burgdorf et al.** } No. 10,834. Docket 27.

On motion of the plaintiffs, by Messrs. Mason N. Richardson and Charles A. Elliot, their solicitors, it is ordered that the defendants, **Henry T. Walker, Mary E. Pittman, George Pittman, Emma L. Walker, Ida L. Walker, George T. Walker, and Louis A. Walker**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to clear of cloud title to lots one, two, three and ten, in square one thousand and seventy-five, and to remove tax title to said lots in said square.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

50 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 23rd, 1887.

In the case of Charles D. Fowler, Administrator of **Catherine Manahan**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 20th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

52 Test: DORSEY CLAGETT, Register of Wills.

No. 2346. Ad. D. 12. WM. TAYLOE SNYDER, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBJA.

Holding a Special Term for Orphans' Court Business.

December 23rd, 1887.

In the case of John Fegan and Frank Hume, Executors of **Peter Fegan**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 27th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

52 Test. DORSEY CLAGETT, Register of Wills.

No. 2428. Ad. D. 12.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Ellen O'Leary**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of December, 1887.

52 her
NORA ✕ O'LEARY,
mark.
Adm'x, 10 Mass. ave. n. w.

No. 2868. Ad. D. 13. NEAL T. MURRAY, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William C. Costin**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of December next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 16th day of December, 1887.

52 CECELIA B. COSTIN, Ex'x, 200 C st. s. w.

No. 2914. Ad. D. 13. C. W. BUSHNELL, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth L. Foller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of December, 1887.

52 ANDREW F. HOFER, Ex'r, 801 O st. n. w.

No. 2484. Ad. D. 12. JAMES M. JOHNSTON, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary A. L. Brown**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23rd day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23rd day of December, 1887.

52 GEORGE BROWN, Ex'r, 419 7th st. s. e.

No. 2787. Ad. D. 13. J. J. DARLINGTON, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Clotworthy et al. v. **Peter Wynne et al.** } No. 10,511. Equity.

Eugene Carusi, James M. Johnston and Edward H. Thomas, trustees, having reported to the Court that they have sold part of lot numbered two (2), in square numbered four hundred and nineteen (419), being the south twenty-five feet thereof, fronting on Eighth street west, and running back that width by the full depth of ninety-five feet, to a ten feet wide alley, in the city of Washington, District of Columbia, to Daniel Giesler, for the sum of six thousand five hundred ($6,500) dollars, it is by the Court, this 12th day of December, A. D. 1887, ordered that the said sale be ratified and confirmed, unless cause be shown to the contrary on or before the 13th day of January, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last named day.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Annie E. Wright v. **Jason Wright.** } No. 10,682. In Equity.

On motion of the petitioner, by J. W. Cromwell, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published for three successive weeks in the Washington Law Reporter.

The object of this suit is for absolute divorce, on the ground of cruelty and adultery, and to enable the petitioner to resume her maiden name.

WM. M. MERRICK. A. J.

December 22, 1887.

A true copy. Test: R. J. MEIGS, Clerk.

51 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Emilie Hart Norton v. **Frederick H. Norton et al.** } No. 10,424. Equity Docket 26.

Upon the filing of the report of sale by the trustee in this cause, and consideration of the same, it is, this 8th day of December, A. D. one thousand eight hundred and eighty-seven (1887), ordered and decreed that the said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 9th day of January, A. D. one thousand eight hundred and eighty-eight (1888).

Provided that a copy of this order be published in the Washington Law Reporter once in each of three successive weeks prior to the said date.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

51 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of December, 1887.

Kate C. Brown v. **James H. Brown.** } No. 10,311. Equity Docket 26.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendant, **James H. Brown**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the defendant, on the grounds of abandonment and adultery.

This notice to be published in the "Washington Law Reporter."

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

51 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

December 3d, 1887.

Catherine Bayliss et al. v. **Jane Farnham et al.** } No. 10,827. Eq.

The trustees appointed to make sale of the real estate mentioned in these proceedings, having reported to the Court that, pursuant to the decree in said cause passed, they offered for sale at public auction the said real estate and sold lots twelve (12) and thirteen (13), in square six hundred and forty (640), to Charles E. Fraser for $1,320.00; and lots fifteen (15) and sixteen (16), in the same square, to John F. Shea for $1,470.00; and lot seventeen (17), in the same square, to John F. Shea for $2,801.52; and lot eighteen (18), in the same square, to John F. Shea for $1,129.26; and lots twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), and twenty-six (26), in said square six hundred and forty (640), to Thomas J. Fisher for $5,814.26; and lot three (3), in square six hundred and thirty-seven (637), to Thomas J. Fisher for $1,076.00; and lot nine (9), in said square six hundred and thirty-seven (637), to John A. Hamilton for $1,076.00; and lot fourteen (14), in square six hundred and thirty-seven (637), to J. A. Hamilton for $1,200.96; and part of lot nine (9), in square six hundred and ninety-three (693), containing 1,875 square feet, to Charles Ford for $843.75; and lot ten (10), in square six hundred and ninety-three (693), to John A. Hamilton for $1,627.50. The total of said sales being $18,359.25. It is ordered, adjudged and decreed, this 3d day of December, A. D. 1887, that the said sales be ratified and confirmed, unless cause to the coutrary be shown on or before the 4th day of January, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said the said 4th day of January, A. D. 1888.

WM. M. MERRICK, A. J.

Ordered that time for final ratification of the within-mentioned sale be extended to January 11th, 1888.

WM. M. MERRICK, A. J.

December 17th, 1887.

A true copy. Test: R. J. MEIGS, Clerk, &c.

51 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of December, 1887.

John W. Graham v. **Geneva M. Graham.** } No. 10,754. Docket 27.

On motion of the plaintiff, by Mr. Duhamel, his solicitor, it is ordered that the defendant, **Geneva M. Graham**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce because of desertion and for custody of child.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

50 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 20th day of December, 1887.

Elizabeth Altschut v. **Frank G. Altschut.** } No. 10,863. Equity Docket 27.

On motion of the plaintiff, by Mr. D. W. Glassie, her solicitor, it is ordered that the defendant, **Frank G. Altschut**, a non-resident, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

51 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Herman T. Eckart**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of December, 1887.

51 ANNIE ECKART, Ex'x.

No. 2915. Ad. D. 13.

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ATTORNEYS-AT-LAW.

CALIFORNIA.

McCALLISTER, WARD, JR., 430 Montgomery St., San Francisco.

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DUNN, GEORGE, Denver.

GEORGIA.

HARBIEON & GILBERT. Gate City Bank Building, Atlanta.

KANSAS.

DOUGLASS, GEORGE L., Wichita.

MINNESOTA.

HEATH, HARTWELL P., St. Paul.

NEBRASKA.

OFFUTT, CHARLES, Paxton Building, Omaha.

OHIO.

WING, GEORGE C., 89 Euclid Ave., Room 8, Cleveland.

WASHINGTON, D. C.

BELL, W. PEIRCE, *Counsel in Patent Causes* 625 F St. n. w.

BLAIR, JOHN S., 2140 F St. n. w.

DUMONT, N., 639 F St. n. w.

EDWARDS & BARNARD, 500 5th St. n. w.

MACKEY, FRANKLIN H., 505 D St. n. w.

SAVILLE, JAMES H., 1419 F St. n. w.

ANSON S. TAYLOR,
Commissioner of Deeds, Notary Public and U. S. Commissioner,
1224 F St. N. W. Washington, D. C.
Attorney for Mercantile Collecting Agency.

BUNDY'S JUSTICE,
$4 per vol. For sale at the Washington Law Reporter Office. A Manual of the Laws of the District of Columbia, from its organization, with notes of decisions and references, by
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Valuable Law Books,
IN
GOOD CONDITION.

Alabama Revised Code, 1867.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Blackstone's Commentaries (by Benjamin) 1879.
Bundy's Justice—latest.
Broom's Commentary on Common Law.
Criminal Law (by Washburne), 1878.
Elements of Law (questions and answers).
Irish Reports, Equity series, vol. II, 1868.
Journal of the Law (Phila.), 1830.
Landlord and Tenant (Sloane), 1878.
Legal Maxims (Morgan).
Leading Criminal Cases, 2d Ed. Bennet & Heard.
Louisiana, 1 to 10 Martin.
Hannon's Digest, vols. 1 and 2.
New York Rev. Stats., vols. 1, 2, 3., 5th ed.
Orphan's Court Manual.
Railway Law (Bonner), 1878.
Alexander's Texas Digest, 2 vols.
Paschal's Annotated Digest, 2 vols. duplicate.
Hartley's Digest, vols. 1, 2, 3.
Dallam's Digest, 3 vols.
Oldham & White's Digest, 1 vol.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Laws 1859–60.
Special and General Laws, 1870, 1873.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.
Smith's Elements of the Law.
Williams on Executors, &c., vol. 2, Thobault's Notes.

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The Washington Law Reporter.
ESTABLISHED 1874.

WM. STONE ABERT, - - - - - Editor

VOL. XVI. - - - - - - - No. 3

WASHINGTON, D. C. - - - - JANUARY 18, 1888

The Law's Delay.

It is remarkable that in the present age there could be found remaining upon the statute books of a State, the legislative enactment, recently considered and recognized as valid in Maryland, by the Court of Appeals, in the case of Tise v. Shaw, reported in full in this number of the LAW REPORTER.

We fully agree with our contemporary, the *Maryland Law Journal*, so far as the statute is concerned, that it affords a striking and unusual instance of great injustice perpetrated under the forms of law.

The courts do not make the laws; they merely construe, apply and enforce the acts of the legislature; reserving, however, the power to declare those acts unconstitutional.

The original Act of Maryland, which is the subject of the decision, will be found in the first volume of Dorsey's Laws of Maryland, pages 229 to 233, A. D. 1785, ch. 80, sections 1 and 2. This law was substantially re-enacted by the legislature, and appears in the Maryland Code of 1860.

The substance of the Act and of the decision is, that when a defendant in any action brought to recover possession of any land dies, leaving infant children, the plaintiff cannot have the action tried until the youngest child of the defendant attains the age of twenty-one years. Although the defendant, as alleged in the case, may have wrongfully ejected the plaintiff, the defendant's infant children are allowed to remain in the possession and enjoyment of the property for the next twenty years to come.

There is no portion of the United States where the decisions of the Maryland Court of Appeals are more highly esteemed than in the District of Columbia; as Maryland is "our mother country."

It is a subject of regret that our own statute law, granted us by Congress from time to time since the cession of our territory to the United States from Maryland in 1801, has not kept pace with the more advanced and enlightened legislation of that State.

We also regret that this same Maryland law of 1785 appears to be in force in this District, by virtue of section 92 of the Revised Statutes of the United States relating to the District of Columbia.

The decision of the majority of the court is no doubt technically correct, in dismissing an appeal from an order of the circuit court granting a continuance, because that order was not a *final judgment.*

We heartily coincide with the views of Chief Justice Alvey, as expressed in his dissenting opinion, wherein he declares the Act in question to be "contrary to the fundamental principles of right and justice, and is therefore unconstitutional and void."

AT the last session of Parliament a bill passed the House of Lords abolishing the law of *primogeniture*, prohibiting the future creation of estates tail, and repealing the statute known as Westminster II. It failed to pass the House of Commons, by reason of that body being engrossed by the Irish question; but it will no doubt be re-introduced in the next Parliament and passed.

SUPREME COURT OF THE UNITED STATES.

ABSTRACT OF DECISIONS.

Brief filed by person interested, does not thereby become party.

In Stryker v. Goodnow's Adm'r (U. S. Supreme Court, Dec. 5, 1887), we have a distinct authority that a person not a party to the record, who takes part in the argument of an appeal by submitting a brief in support of his interest in the result of the cause, does not thereby become a party in such sense as to be bound by the decision of an adjudication. It appeared in this suit that in a former suit by one Wolcott against his grantor with warranty for damages, on the ground that the title was not in the grantor, but in the Dubuque & Pacific R. R. Co., the railroad company aided plaintiff's argument. The court now say:

We have not overlooked the fact that a brief was filed at the hearing in this court on behalf of the railroad company to support the claim of Wolcott that the title of that company was the best. Such a proceeding did not make the railroad company a party to the suit, or bind it by the decree. Being interested in the question to be decided, the company was anxious to secure a judgment that could not be used as a precedent against its own claims in any litigation that might thereafter arise in respect to its own property. It is not an uncommon thing in this court to allow briefs to be presented by or on behalf of persons who are not parties to the suit, but who are interested in the questions to be decided, and it has never been supposed that the judgment in such a case would estop the intervenor in a suit of his own which presented the same questions. It could be used as a precedent, but not as an estoppel in the second suit.

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NO ASSIGNMENT OF ERROR.

There is perhaps no court in the country where loose practice and slovenly records from below more frequently impede judicial business than the Supreme Court of the United States. Certainly there is none where lucid records are more important. One is frequently struck by the patience with which the court bear with careless and almost unintelligible records brought before it for review, and extract the substantial question from a mass of confused, disconnected and ill-authenticated documents. A recent admonition on this point in the decision of the case of Benites v. Hampton, where a record from the Territorial Court of Utah was presented, is worthy the attention of practitioners.

Section 997 of the Revised Statutes is in these words:

"There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

Rule 8, sec. 1, of this court, is as follows:

"The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, under his hand and the seal of the court."

Rule 21 requires printed briefs to be filed, and section 2 of that rule provides that the brief shall contain, "in the order here stated—

"(1.) A concise abstract or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

"(2.) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specifications shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the actions of the court upon it.

"(3.) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length."

Secs. 4 and 5 of the same rule are as follows:

"4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

"When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court."

Chief Justice Waite, on dismissing the case for want of an assignment of errors and brief, said: This statute and these rules have been disregarded altogether in this case. No assignment of errors is found in the transcript annexed to and returned with the writ. The assignment of errors on the appeal from the district court to the Supreme Court of the Territory cannot be accepted in this court as the equivalent of the assignment required by the statute.

The brief contains no specification of errors such as is required by the rule, and there is no statement of the case presenting the questions involved, or the manner in which they are raised. In the argument there is no reference to the pages of the record relied on to support the points which are made. Not only is there a failure to quote the full substance of the evidence admitted or rejected, of which complaint is made, but even the names of the several witnesses upon whose testimony the objections rest are not mentioned. In short, to get at the matter which is complained of, we must hunt through what is called a "proposed statement on appeal and motion for a new trial," filling thirty pages of the record, with nothing in the brief to aid us in the search. This we are unwilling to do. In the present crowded state of our docket, we must insist on a reasonable compliance with the rules which have been adopted to facilitate the investigation of cases and help us in our work.

We, therefore, dismiss the case, under section 5 of rule 21, for want of an assignment of errors, and of a brief such as is required by the rules. [See also, Boston Mining Co. v. Eagle Mining Co., 115 U. S. Rep., 221.]

MISTAKE IN CITATION.

At the last term of the court, a citation appeared in a record to have been signed by the Hon. John W. Barr, *Chief Justice of the Supreme Court of the United States*, the 4th day of September, A. D. 1883. It is needless to say that Chief Justice Waite, in disposing of a motion to dismiss, announced that the court would take judicial notice of the fact that Judge Barr (U. S. District Judge) was not at that date the Chief Justice of the Supreme Court.

BILL OF EXCEPTIONS.

In the recent case of N. Y., Lake Erie and Western R. R. Co. v. Madison, the plaintiff in error sought reversal on the ground among others, that the judge erred in his charge in certain particulars. The action was for damages by negligence, and Madison, the plaintiff below, recovered. The bill of exceptions did not support the exception to the charge by showing what was the state of facts to which the alleged misdirection applied. The court say on this point:

It is sufficient to say that there is nothing in the record to show the materiality of the charge complained of, or of the requests to which were refused. No part of the evidence, save that which was excepted to, is set out in the bill of exceptions, and there is no such statement of

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the facts proven as will enable us to see that the charge as given or refused had any reference to the case as it appeared at the trial. The record as it comes to us presents only abstract questions of law, which may or may not have been ruled in a way to affect the defendant injuriously. It has long been settled that such questions will not be considered here on a writ of error unless it appears from the bill of exceptions, or otherwise in the record, that the facts were such as to make them material to the issue which was tried. As was said in Dunlap v. Monroe, 7 Cranch, 270: "Each bill of exceptions must be considered as presenting a distinct and substantive case; and it is on the evidence stated in itself alone, that the court is to decide. We cannot go beyond it and collect other facts which must have been in the mind of the party, and the insertion of which in this bill of exceptions could alone have sanctioned the opinion as prayed for." To the same effect is Worthington v. Mason, 101 U. S., 149, 152, where this appears: "As we understand the principles on which judgments here are reviewed by writ of error, that error must appear by some ruling on the pleadings, or on a state of facts presented to this court. Those facts, apart from the pleadings, can only be shown here by a special verdict, an agreed statement duly signed and submitted to the court below, or by bill of exceptions. When, in the latter, complaint is made of the instructions given or refused, it must be accompanied by a distinct statement of testimony given or offered which raises the question to which the instructions apply." "The proof of the facts which make the charge erroneous must be distinctly set forth, or it must appear that evidence was given tending to prove them." See also United States v. Morgan, 11 How., 153, 158; Reed v. Gardner, 17 Wall., 409; Jones v. Buckell, 104 U. S., 554; Phœnix Life Ins. Co. v. Raddin, 120 U. S., 183, 196. Upon the record as it comes to us we find no error, and the judgment is consequently affirmed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

GEORGE F. RAUB v. JAMES L. BARBOUR.

AT LAW. No. 26,668.

Decided January 3, 1888.
The CHIEF JUSTICE and Justices HAGNER, JAMES and MERRICK sitting.

A covenant giving the lessee and his assigns an option of purchase of the land at a given price at any time during the term was inserted in a lease in consideration of the contemporaneous verbal promise of the lessee that he would divide with the lessor whatever profit he, the lessee, should make in the event of his assigning the lease. The lessee thereafter assigned the lease for a large profit, and in an action by the lessor to recover one-half of the profit thereof, it was objected that evidence of the verbal contract was inadmissible as tending to vary the terms of the written instrument; but it was held, overruling the objection, that the verbal promise was collateral to the main written contract and did not interfere with its terms, and that an action would lie to enforce it. Evidence of such a promise would also be admissible as showing an additional consideration for the execution of the written contract.

FRANKLIN H. MACKEY for plaintiff.

H. W. GARNETT for defendant.

The plaintiff seeks to recover a sum of money which he insists is payable by the defendant under a verbal agreement and promise made on the 20th of July, 1885, contemporaneously with the execution of a lease to the defendant of certain lots in Washington city. The lease contained a covenant that the plaintiff would sell and convey the lots to the defendant at a designated price at any time during its continuance; and the averment of the declaration is that the defendant promised the plaintiff, that if he would execute the lease with the covenant in question inserted, the defendant in consideration of its insertion, would pay to the plaintiff in addition to the consideration to be paid for the lease of the premises, one-half of whatever profit the defendant might make and receive by reason of any sale or assignment he might thereafter make of his right title and interest under and by virtue of the said covenant. The declaration further averred that in consideration of this promise and agreement of the defendant the plaintiff executed and delivered the said lease with the said covenant contained therein; that the defendant in August, 1885, assigned his right, title and interest in and to the said covenant to the Manassas Panorama Company in consideration of a large sum of money, and thereby made and received a profit of $5,000; by reason of which there accrued to the plaintiff a right to demand and receive from the defendant one-half of said sum, by virtue of the alleged agreement.

To the declaration the defendant demurred, and assigned, a matter of law to be argued, "that the plaintiff cannot set up, or introduce any consideration changing, adding to or different from that set out in the written lease, nor can he set up or introduce any parol agreement made previously to or contemporaneously with the execution of the lease set up in his declaration, and relating to the same subject-matter."

The plaintiff insists that the declaration sets out a contemporaneous but distinct, and collateral agreement between the parties to the lease, connected with but not inconsistent with the writing; and that such an agreement, although resting in parol, may be enforced at law, if otherwise valid. The covenant contained in the lease reads thus:

"And the said parties of the first part, for the aforesaid consideration, do hereby covenant and agree, to and with the said party of the second part, his heirs and assigns, to sell and convey by a good and sufficient deed, with full covenant warranty, the said real estate hereby leased to the said party of the second part, his heirs and assigns, at and for the sum of one dollar and fifty cents per square foot, free and clear from all incumbrances or liabilities."

By its terms the lease was to continue five years, at a monthly rent, but was to cease and determine when the sale therein referred to should be consummated.

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The sale spoken of in the covenant was to be a sale of the real estate; and this sale was to be consummated by the lessee, his heirs or assigns, paying the money named, and by the lessee conveying the land by sufficient deed, with full warranty to the lessee, his heirs and assigns.

The sale claimed to have been provided for in the alleged *verbal agreement*, was "a sale or assignment which the defendant should thereafter make, not of the land, but of his (the defendant's) *right, title and interest, under and by virtue of said covenant;*" and the declaration avers that the profit claimed was realized when the defendant "assigned his right title and interest in and to *the said covenant*, to the Manassas Company," and that the half of what might be realized from this last sale was an additional consideration upon which alone he agreed to the insertion of said covenant in the lease.

Assuming as we must, under the demurrer, that the plaintiff could offer testimony at the trial to support these averments, does he present such a case in his declaration as the court should allow to be opened to the jury?

In 36 Maryland, 166, Bashor v. Forbes, the Court of Appeals in overruling the objection that certain parol evidence offered below was inadmissible as tending to vary, add to, or contradict the written contract between the parties, says, "it is well settled by the most unquestionable authorities, that proof is admissible of any collateral, parol agreement or independent fact, which does not interfere with the terms of the written contract, though it may relate to the same subject matter; and whether such collateral agreement was made or independent fact occurred contemporaneously with or as preliminary to the main contract in writing, is quite immaterial. Lindley v. Lacey, 17 Com. B. (N. S.), 578; 2 Taylor Ev., secs. 1,038 and 1949. And this principle has been very fully and expressly sanctioned by this court in the cases of McCreary v. McCreary, 5 G. & J., 147; Creamer v. Stephenson, 15 Md., 211."

In 2 Taylor's Evidence, sec. 1,038, the author after using similar language, adds: "Still less does the rule exclude evidence of an oral agreement, which constitutes a condition on which the performance of the written agreement is to depend."

This principle is supported by many decisions tending to sustain the contention of the plaintiff.

Thus in 41 Maryland, 170, Fusting v. Sullivan, the owners of a country store at Catonsville agreed in writing to sell the house store, lumber yard, barns and premises therein designated to a purchaser, who bought with the view of carrying on the same kind of business, and did conduct the same after the sale, at that stand. In the course of subsequent litigation between them the purchaser offered to prove that at the time of his purchase of the stock of goods, and of the execution of the written contract of sale, it was verbally agreed between the parties that the seller should not again go into business at Catonsville; and that the acquisition of the good will and the agreement not to set up a store there was part of the consideration of the purchase; and he claimed a right to recover for a breach of this verbal agreement from the seller who had resumed mercantile business at the place named. The written contract was silent as to the sale of the good will, and made no mention of any agreement not to open another store; but the Court of Appeals held the testimony should have been admitted, as it tended to prove an independent collateral fact about which the written contract was silent, and as establishing "an additional suppletory agreement not in the written contract." See also 38 Maryland, 397; Planter's Ins. Co. v. Depew, 54 Md., 201; Building Society v. Smith.

In England several well considered cases of recent date have recognized the same distinction.

In Lindley v. Lacey, 17 C. B. (N. S.), 578, decided in 1854, upon a negotiation between the plaintiff and the defendant for the sale of the fixtures, furniture, and good will of a business (the agreement for which was afterwards reduced to writing), a distinct and separate promise was made by the defendant in consideration of the plaintiff's signing the agreement, that he (the defendant) would settle an action then pending against the plaintiff at the suit of one Chase. Held, that the evidence of this prior oral agreement was admissible notwithstanding the written agreement contained an authorization to the defendant to settle Chase's action out of the purchase money.

Erle, C. J., said: I take it to be substantially the same as if the agreement for the sale of the goods being before them, Lacey had said to Lindley, "in consideration of your signing the agreement I will settle Chase's action."

"If the instrument shows that it was meant to contain the whole bargain between the parties, no intrinsic evidence can be admitted to introduce a term which does not appear there. But if it be clear that the written instrument does not contain the whole, and the jury find that there was a distinct collateral verbal agreement between the parties not inconsistent with the written contract, the law does not prohibit such distinct collateral agreement from being enforced."

"I think it is clear from the evidence here that there was a distinct collateral agreement that Chase's action should be settled by the defendant, and that evidence of that agreement, which was perfectly consistent with the written agreement, was admissible."

Byles, J., in delivering his concurring opinion to the same effect, assigns as a further reason: "More especially if, as here, it (the parol agreement), in addition to its being a stipulation, was also a *condition*."

Here the payment of Chase's debt had been the subject of negotiation, and a term referring to it had been inserted in the agreement; and yet a different disposition of the same subject was allowed to be established by parol evidence.

In Morgan v. Griffith, 6 Ex. Law Rep., 70, decided in 1871, Griffith agreed to hire of Morgan certain grass land on the terms of a lease which was to be signed at some future time. Griffith having entered on the land, found it was overrun with rabbits; and on the lease being presented to him for signature, he declined to sign it, unless Morgan would promise to destroy the

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rabbits. Thereupon the defendant said: "I promise you faithfully they shall be destroyed." The plaintiff requested that a term to that effect should be inserted in the lease. The defendant refused compliance upon the ground that he was unwilling to alter the form of the lease, but again promised that the rabbits should be destroyed. Plaintiff accordingly signed the lease in the unaltered form, which provided, among other things, that the tenant should not shoot, hunt or sport on the land, or destroy any of the game, but would use his best endeavors to preserve the same, and would allow Morgan or his friends at any time to hunt, shoot or sport on the land. Afterwards, the rabbits not having been destroyed by Morgan, Griffith brought suit for damages. It was held, affirming the court below, that the parol agreement was collateral to the written lease, and that evidence to establish it was properly admitted. The result of the parol contract here was absolutely in opposition to the language of the lease.

In Erskine v. Adeane, 8 Chancery Appeal Cases, Law Reports, 756, decided in 1873, a similar state of facts was presented.

A farmer in treaty for a lease of a farm declined to take it on account of the quantity of game. The lessor promised he would kill down the hares and rabbits and would not let the shooting, although he refused to allow the promise to be inserted in the lease except in this form, "but so nevertheless that the lessee, his executor, &c., should be at liberty to keep down the rabbits on the land otherwise than by shooting." The tenant accordingly executed the lease prepared by the lessee's solicitor, in which the right to kill the game was reserved to the lessor, his friends and servants. The lessor, after the lease was signed, let the shooting and did not kill down the game. Held, that there was a binding *collateral agreement* to kill down the game, and that the tenant was entitled to compensation for damages resulting from the failure to perform the agreement. Sir G. Mellish, L. J., said: "No doubt as a rule of law, if parties enter into negotiations affecting the terms of a bargain, and afterwards reduce it into writing, verbal evidence will not be admitted to introduce additional terms into the agreement; but nevertheless what is called a *collateral agreement*, where the parties have entered into an agreement for a lease or for any other deed under seal, may be made in consideration of one of the parties executing that deed, unless, of course, the stipulation contradicts the terms of the deed itself. The lessor stipulated he would behave in a particular way with reference to the powers that were to be reserved to him by the lease."

Sir W. L. James, in concurring, said: "The evidence shows that while there was an agreement going on for the lease, which was to contain certain stipulations, only a promise was made, or a representation which amounted to a promise, by Mr. Adeane, that the game, of which the tenant was complaining, should be so dealt with as not to amount to a serious nuisance to the tenant."

As the result of the objection by the lessee, a term as to the destruction of the rabbits was inserted in the lease, and permission was given to the lessee to keep down the rabbits on his land; hence the parties had undertaken to deal with the subject *in their writing*, and yet the collateral verbal contract was allowed to be given in proof. See also 4 Hurlst & Norm. Ex., 1, Harris v. Rickett.

So in Nickerson v. Saunders, 36 Maine, 413, where a grantor executed a deed reciting the payment of a sum of money as the consideration for the purchase; he was allowed to prove a contemporaneous verbal agreement with the grantee, that if a road running near the land should be discontinued the grantor should be entitled to receive whatever might be paid by the public on that account; and he recovered the sum the county commissioners had paid to the grantee after the sale, when the road was changed. The court held the sum expressed in the deed and received by the grantor was for the value of the land as it then stood; but this did not bar the recovery of the further sum, which was the subject of the verbal agreement.

The decisions are numerous that it is permissible to show a consideration additional to that expressed in the deed or other written contract, where it is of the same character; and if the alleged promise to pay the one-half of the profit of the sale referred to may be regarded as an additional consideration for the execution of the lease, the testimony would be admissible upon that ground.

In the cases we have cited, and in many others where the decisions have been to the same effect, the parol agreements admitted in evidence appeared to interfere with the terms of the written contract to a much greater extent than the verbal promise set forth in the declaration before us seems to conflict with the bargain embodied in the lease. The agreement to make sale of the property to the lessee for a designated price is not usual in ordinary leases, where the lessee generally is possessed of no assignable interest except the right of occupation for the designated term. And when a covenant to secure so exceptional a provision is inserted, it does not appear unreasonable that the lessor should exact as a condition that in case the covenant should be assigned to a third party, an additional consideration should be paid for the privilege, to be regulated by the profit arising from the assignment. Such an agreement would be collateral to the main written contract, and not interfering with its terms; and if the lease was signed only upon the condition that the lessee should divide with the lessor the profit arising from his assignment of the covenant, as is specially set forth in the narr, it would be countenancing an act of bad faith to deny a right of action to the lessor to enforce the agreement.

In the case of Campbell v. McClenahan, 6 Serg & Rawle, 171, a deed had been prepared for the conveyance of certain land from A to B. A refused to sign it unless B would agree that notwithstanding the deed, he should be allowed to cut a quantity of timber from the woods.

To induce A to sign the deed, B agreed verbally that A should have the privilege claimed; and the deed was executed and B entered into possession. The vendee subsequently refused to perform his promise, upon the ground that the writing expressed the contract, which could not be varied by parol; and the grantor brought an action on this promise. This was sustained by the court, which held that evi-

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dence might be given of the parol agreement; and said that the point had been frequently decided by the court; and that to refuse to compel performance of the verbal promise after the defendant had made use of it to get the plaintiff's signature to the agreement would be permitting the defendant to avail himself of a trick to secure the evasion of his promise.

We think the plaintiff here ought to have the opportunity of proving his case, if he can do so, and we accordingly reverse the ruling below, with leave to the defendant to plead over.

COURT OF APPEALS OF MARYLAND.

TISE v. SHAW.

Ejectment—Death of Defendant—Plea of Parol Demurrer—Continuance.—Pending an action of ejectment the defendant died, and on motion of the plaintiff the defendant's infant children were made parties defendant and a guardian *ad litem* appointed. The guardian pleaded the infancy, by way of plea of parol demurrer, and insisted that it was not for the benefit of the infants to have the action tried during their infancy. The court ordered that the case should be continued until all the infants arrived at full age. *Held*, that under the provisions of Art. 75, sec. 40 of the code this order was proper, the statute providing that in such a case of infancy the case shall not be tried, but may be continued until the infant attains majority.

Appeal from the Circuit Court of Prince George's county.

C. C. MAGRUDER for appellants.

CHARLES H. STANLEY for appellees.

OPINION BY IRVING, J.—This action of ejectment was instituted against one Charles Parker, who died, and on motion of the plaintiff his infant children (all of whom, by the agreed statement of facts, were under the age of 16 years) were made parties defendant, and Zachariah Shaw was appointed guardian *ad litem* to defend for them. He appeared by attorney, and pleaded the infancy by way of plea in abatement, and insisted that it was not for the benefit of the infants to have the action tried during their infancy. This plea in abatement was duly verified by the affidavit of the guardian *ad litem*. It seems to have been pleaded at the imparlance term; and the court overruled a motion of *ne recipiatur* based on the contention that it should have been filed by the rule day. The rules of the court are not in the record, and we must assume the court in its action properly interpreted the requirement of its own rules.

It also appears by the record that a demurrer was filed to this plea in abatement, which demurrer was first sustained by the court; but afterwards this ruling was stricken out, and the demurrer was overruled, and judgment was given thereon for the defendants; and then the court ordered "that this case shall not be tried until all the infants arrive at full age." Appeal was at once taken to this court. There having been no final judgment in the cause, but only an order for a continuance till the infants reach full age, we do not see how an appeal can be sustained. But as the appeal was designed to test the validity and operative character of the statute under which the order of the court continuing the cause was passed, we will consider the question, which is one of great importance.

The fortieth section of article 75 of the Code of Public General Laws is in this language: "Where a party in any action brought to recover lands, or in which the title thereof is involved, shall die, and the proper person to be made a party in the place of the person so dying shall be an infant, such action shall not be tried during such infancy, unless the guardians or next friend of such infant satisfy the court that it will be for the benefit of the infant to have the action tried during his infancy; but the action may be continued till the infant arrives at full age." The order of the court continuing the cause, rests for its authority on the imperative language of this statute, which says that in a case of infancy the case shall not be tried, but, instead of abating it and putting an end to it entirely, also provides the suit may be continued until the infant shall attain majority. At the common law the "parol demurred" in such a case (Tidd, Pr., 635; Alex. Br. St., 122,) and this statute was, in effect, but making the common law a statutory provision.

It is contended that this provision is no longer operative, and is so far inconsistent with the provisions of Article 2, sec. 1, of the Code, which are so general, that it cannot be enforced. Section 1 of Article 2, and section 40, Art. 75, both come from the same act, the Act of 1785, ch. 80. The first is section 1, and the second is section 2 of that act. After making the general provision that suits should not abate by reason of death, an exception was made in the event named in the second section. The two sections of this act of 1785, having been both re-enacted in 1860, when the Code was adopted, neither can have superiority over the other, and they must be construed together, and both made to stand as they did in the Act of 1785—the second section as an exception to the first. For convenience sake they have been separated in the Code, and no longer stand in juxtaposition as in the original; but having been re-enacted at one and the same time, they must be construed as if they had been continued side by side.

We find no instances in our reports where the statute has been enforced, but it has several times been recognized as the law. In Hammond v. Hammond, 2 Bland, 336, Chancellor Bland says, formerly the parol demurred both in law and equity, but there had been a change by statute as to equity; and that the statute allowing sales of decedent's real estate for the payment of debts was passed to give the chancellor power to decree sale after the infant heir had been summoned and answered. He quotes the language of this section under consideration as being the law enforceable at law in the cases provided for. He so recognized it in Watkins v. Worthington, 2 Bland, 509-519, and in Tessier v. Wise, 3 Bland, 28, 29. In James v. Boyd, 1 Har. & G., 1, the judgment below was sustained because it did not affirmatively appear at the trial that the heir was not then of full age. The law was evidently not thought a wise one; but inferentially the court recognized its binding authority, if the condition of things justified or required its application; and the court assigned a reason why that case did not require a reversal of the judgment appealed

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from, because of its provision, viz: that it did not appear the party was a minor when the case was tried.

It was contended in argument that its enforcement will operate harshly, and that because of its apparently long disuse it should be treated as obsolete. In the days of feudal tenures and the rights of primogeniture, it may have served a useful purpose, but in the changed condition of things in the present day it seems to us to operate as an obstruction of justice rather than as a protection of rights; and in our opinion it should no longer have place on the statute book. But the statute is plain, imperative and unambiguous, and was re-enacted as part of the written law of the State as lately as 1860, when the Code was adopted, and it cannot be disregarded. It is not our province to repeal it. Having been so long the law, and unchallenged as void, because it is in derogation of common right, we cannot so declare it. The legislature must deal with it if it is hurtful.

Appeal dismissed.

DISSENTING OPINION OF ALVEY, C. J.

With the greatest respect for the opinions of others, I cannot agree to the opinion of the court rendered in this case. The plea of infancy interposed here has the effect, and was intended to have the effect, of the plea of parol demurrer, as that anomalous and antiquated plea is defined by the common law, or rather the feudal law, in the principles of which the plea is founded. The second section of the Act of 1785, ch. 80, embodied in the Code as section 49 of Article 75, seems to have been taken almost literally from the third book of Blackstone's Commentaries, page 300, where the parol demurrer is defined; and what the defence really is, and when it could be invoked in England, before it was abolished by statute, may be seen in the case of Plasket v. Beeby and others, 4 East, 485, where the form of the plea, and the prayer that the parol may demur, may be found. It is matter of defence only by way of suspension of the right to prosecute the action, until all the infants may arrive to the full age of twenty-one years. It is a dilatory plea, and, like all other dilatory pleas, it cannot be pleaded with pleas in bar of the action; for if pleas in bar are interposed with dilatory pleas, or before matters pleaded in abatement or suspension of the actions disposed of by the court, such dilatory defence is, by the well established principles of pleading, waived and abandoned. Chapman v. Davis, 4 Gill, 166, 176; Cruzen v. McKaig, 57 Md., 459; 14 How., 505; 12 Wall., 65, 84; Steph. Pl., 430, 431; 1 Chit. Pl. [16th ed.] 463. Here the infants, by their guardian, have pleaded "that the right of possession," as well as the actual possession of the real estate sued for, is in them, which is a plea in bar of the right of the plaintiff to recover; for the plaintiffs cannot recover, unless they have both the legal title and the immediate right of possession at the time of bringing action. Wilson v. Inloes, 11 G. & J., 233; Lannay v. Wilson, 30 Md., 546. But with this plea in bar was also pleaded the infancy of the defendants, though without observing the formality of such plea, by praying the parol to demur. There was a motion by the plaintiffs that this dilatory plea should not be received, and I think that motion should have prevailed. In the case of Derisley v. Custance, 4 T. Rep., 75, it was held, that an infant could not pray the parol to demur in any stage of the proceeding, after pleading to the merits of the suit. And in that case Mr. Justice Butler said: "If the defendant had intended to take advantage of his infancy, he should have done it before he pleaded, for it is a dilatory plea, and does not go to the merits; it only suspends the proceedings." The plea certainly has nothing to commend it, and the strictest rules ought to be applied to it.

But I dissent from the opinion of the majority of the court upon a broader ground than that of mere matter of pleading. In my judgment that provision of the Code, taken from the Act of 1785, ch. 80, which authorizes the suspension of the prosecutions of actions until the infant defendants, however young, attain full age, is contrary to the fundamental principles of right and justice, and is therefore unconstitutional and void. This is an action of ejectment, wherein it is alleged that the land sued for is the property of the plaintiffs, and that it was tortiously entered upon by the father of the defendants, and the plaintiffs wrongfully ejected therefore. After the action was brought against the party alleged to be a wrong doer, he died, and his infant children, as his heirs at law, some of them very young, have been made defendants. And because of this accidental change of parties, in the course of the proceeding, it is now determined that, by virtue of the provision of the statute, these children of the party alleged to be the wrong-doer, are to be allowed to remain in possession and enjoyment of this property for the next twenty years to come, at the expiration of which time the property may be shown to be the rightful estate of the plaintiffs, after it has, perhaps, been devastated and ruined. And all this to be effected under the forms of law.

There are some things, I apprehend, that the legislature cannot do, and among these is the exercise of power to take the private property of one man and confer it upon another, even for a limited period or use. University v. Williams, 9 Gill, 365. And that being so, it is difficult to distinguish that case from the present, where the law is made to operate to prevent the recovery by the owner of property wrongfully withheld from him. It is clearly a denial of justice; the closing of the courts against a party who may have been greviously wronged, and whose property may be secured to the use of the infant defendants against all right, for a period of half a lifetime. It my judgment, a statute that works out such a result, is in derogation, not only of the first principles of justice, but of the 19th section of the Declaration of Rights, which provides, "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the law of the land." If this declaration of fundamental principle is to have any force or effect in restraining legislative power, it would

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seem to be sufficient to protect the plaintiffs in this case against a great wrong, which they might show to exist in violation of their right of property.

It is for the reasons that I have briefly assigned that I feel constrained to dissent from the opinion of a majority of the court.

SUPREME COURT OF PENNSYLVANIA.

SOUTH SIDE PASSENGER RAILWAY COMPANY v. TRICH.

When the facts are undisputed the question of the proximate cause of the accident is for the court.

A person is not required to anticipate and provide against every possible consequence of his acts, but only for such events as are likely to happen.

A driver of a passenger railway car having suddenly quickened the pace of his horses to escape collision with a runaway team that was approaching him, a passenger who had just stepped upon the platform was thrown off by the jolt and immediately afterward struck by the shaft of the runaway team and injured. No damage was caused by the fall from the car. *Held*,

1. That the question of proximate cause was for the court, the facts being uncontroverted.

2. That in this case the proximate cause of the injury was the collision with the runaway team, and not the act of the car driver in urging his horses to a faster gait.

JOHN DALZELL (GEORGE B. GORDON, with him), for plaintiff in error.

A. BLAKELEY (A. M. BLAKELEY, with him), for defendants in error.

Error to Court of Common Pleas No. 2 of Allegheny county.

It appeared from the evidence in this case that Mrs. Trich, having stepped upon the platform of a car upon Third avenue in Pittsburgh, just before it crossed Smithfield street, was thrown from it by a sudden jolt, almost exactly at the intersection. This was caused by the efforts of the driver to avoid collision with a runaway horse which he saw coming down Smithfield street. Mrs. Trich came down on her feet unhurt, but was almost immediately struck by the shaft of the runaway team and seriously injured.

Counsel for the defendant requested the court to charge as follows: "It being the undisputed evidence in the case that Mrs. Trich was not injured by falling off the defendant's car, but by being struck by a runaway horse, even if the driver of the car was guilty of negligence, such negligence was not the proximate cause of the injury, and the plaintiff cannot recover." The court answered: "Refused. It is a question for the jury under the evidence and under the further instruction of the court."

The verdict was for the plaintiff for $1,310.25.

Opinion by GREEN, J., November 11th, 1887.

There is no manner of question as to what was the actual and immediate cause of the injury inflicted upon Mrs. Trich. It was an entirely undisputed fact that she was struck and injured by a runaway horse and buggy. All the witnesses who saw the occurrence so testify. Thus Mr. McCully, the father of Mrs. Trich, who was present with her at the time, and was examined on her behalf, after describing her attempt to get on the car, and saying that she was bounced off, adds: "A moment or two afterwards, here comes a runaway horse and buggy down the street, and the shaft, I suppose it was, caught her under the arm and dragged her to the street crossing and she fell away." The only other witness examined for the plaintiff as to the facts of the occurrence, M. M. Herrington, testified: "There is a banking building there on the corner, and I saw the lady fall—fall off—and when she fell, to the best of my knowledge, she kind of threw herself back this way, and there was a phæton or buggy of some kind running—a horse running down the street with a buggy—and it struck her, and they picked her up and carried her into Mr. Johnson's drug store." There was no contradiction of this testimony. But one other witness, Mrs. Vrailing, examined by the defendant, testified to the fact of the injury, and she also said it was done by the buggy striking the woman. The learned court below in the charge said: "The evidence seems to me to preponderate very largely in favor of the fact that the immediate force which caused the injury to this woman was the runaway horse."

This was an understatement of the testimony which might have led the jury to suppose that there was an open question, with a preponderance of evidence only, as to whether it was the runaway horse and buggy which inflicted the injury. The defendant had presented a point, stating that it was the undisputed evidence that Mrs. Trich was injured by being struck by a runaway horse, so that the question was directly before the court. In view of that circumstance, we think the court should have specifically so charged and not left it as an open question for the jury to determine with a mere expression of opinion that the evidence preponderated in that direction.

Assuming then, as we do, that it was the undisputed evidence that the injury was inflicted by the runaway horse and buggy, the only remaining question is whether it was the duty of the court to declare whether this was the proximate cause of the injury. The point presented by the defendant asked for such an instruction, but the court refused it, saying it was a question for the jury under the evidence. In this we think there was esror. In the case of West Mahoney v. Watson, 112 Penna. St. Rep., 574, we reversed the court below for making just such an answer to just such a point, and, upon a review of the facts of the case, we held that they did not constitute an instance of proximate cause as against the defendant, and therefore decided that the defendant's point should have been affirmed, which took the case from the jury. Mr. Justice Paxton, in delivering the opinion, said: "While it is undoubtedly true as a general proposition that the question of proximate cause is for the jury, yet it has been repeatedly held, that where there are no disputed facts, the court may determine it. It is sufficient to refer to Hoag v. The Railroad Co., 85 Penna. St. Rep., 293. In that case this court, following Railroad v. Kerr, 62 Pa. St. R., 353, and Railroad Co. v. Hope, 80 Id., 373, laid down the rule as to proximate cause as follows; 'In determining what is proximate cause the true

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rule is that the injury must be the natural and probable consequence of the negligence; such a consequence as, under the surrounding circumstances of the case, might and ought to have been foreseen by the wrong-doer as likely to flow from his act.'"

Applying this rule to the facts of the present case can it be said that the injury of Mrs. Trich was the natural and probable consequence of the car driver's negligence in urging his horses to a faster gate? We think not. There was not a particle of evidence to show that runaway horses and vehicles were frequently, or indeed, ever seen upon Smithfield street, where this accident occurred. There was no evidence upon that subject. It was certainly not a natural consequence of a person being upon that street that he would be struck by a runaway horse. Nor is there the slightest reason for saying that it would be a probable consequence. The utmost that can be said would be that such a consequence might possibly happen. But things or results which are only possible cannot be spoken of as either probable or natural. For the latter are those things or events which are likely to happen, and which, for that reason, should be foreseen. Things which are possible may never happen, but those which are natural or probable are those which do happen, and happen with such frequency or regularity as to become a matter of definite inference. To impose such a standard of care as requires, in the ordinary affairs of life, precaution on the part of individuals against all the possibilities which may occur, is establishing a degree of responsibility quite beyond any legal limitations which have yet been declared. We are of the opinion that in the facts of the present case the direct and immediate cause of Mrs. Trich's injury was her being struck by a runaway horse and buggy over which the defendant company had no sort of control, and for which it is not responsible, and therefore we conclude that the proximate cause of the injury, in the legal sense, was the collision of the horse and buggy with the person of Mrs. Trich, and not the negligence of the defendant.

The case of West Mahanoy v. Watson came again in this court, and is reported in 44 Legal Intell., 356. The present Chief Justice, in delivering the opinion of the court, said: "These facts narrow the case down to the single question, was the upset at the ash heap on the township road the immediate or direct cause of the loss of the horses? As we have seen, the facts themselves answer this interrogatory in the negative, and necessarily determine the case in favor of the plaintiffs in error. In the case of Hoag v. Lake Shore and Michigan Central Railroad Co., 85 Pa., 293, Mr. Justice Trunkey, then President of the Common Pleas of Venango county, in his charge to the jury on the trial of the above-named case, said: 'The immediate and not the remote cause is to be considered. This maxim is not to be controlled by time or distance, but by the succession of events. The question is, did the cause alleged produce its effect without another cause intervening, or was it to operate through or by means of this intervening cause? As the principle here stated was adopted by the affirmance of this court, following Pennsylvania Railroad v. Kerr, 62 Penna., 353, we may regard it as the settled law of this State."

In the facts of the present case we find a perfect illustration of this principle. Mrs. Trich herself testified that when she was "bounced" from the car she fell on her feet. Immediately after, she was struck by the runaway horse and buggy, and from them received her injury. The jolting from the car simply landed her on her feet and inflicted no injury. But another agency intervened, which was entirely independent of any act of the defendant, and that agency alone inflicted the injury in question. Following the doctrine of the last case cited, we feel clearly obliged to hold that the plaintiff's injury was inflicted by the special intervening agency stated, and therefore the defendant is not liable. In all of the cases cited, as in several others not referred to, this court finally determined them upon its own view of the facts without regard to the verdicts of the juries. The defendant's point should have been affirmed.

Judgment reversed.

WE cordially recommend to our readers, *The Maryland Law Journal and Real Estate Record*, heretofore known as *The Maryland Law Record*, which begins the new year with a new name, enlarged size, improved appearance and increased interest and value.

The two departments of Law and Real Estate combine to make a handsome sixteen page paper of the greatest importance to all who have any interest whatever in the subjects.

This is the only Law and Real Estate journal published in Maryland, and it is safe to say that it has never before been so valuable as now. In the Law Department all the Court of Appeals decisions are reported promptly and in advance of their publication elsewhere. Legal articles of value, reviews of the latest books, selections and other matter appear regularly.

The Real Estate Department is a complete history, review and record of the real estate market of the whole State, with particular reference, of course, to Baltimore city. Complete and accurrate lists of the land transfers, mortgages, &c., are found here every week, and are published nowhere else in permanent form.

The greatest change and improvement is noticed, when we compare the paper as it now is with what it was a year ago.

We advise our readers to send to Mr. Edgar G. Miller, Jr., the editor, for specimen copies (free), from the Office, 120 East Lexington Street, Baltimore. Terms, $3 per year.

As it will be impossible for us to publish even an abstract of all of the Maryland decisions, it would be well for all lawyers interested in the decisions of the Court of Appeals to subscribe for the journal.

CONSTRUCTION OF DEED.—Where granting clause would convey the fee in land, but the additional clause "for the use of a plank road," *Held*, that it was a limitation upon the grant and only conveyed an easement. Robinson v. Missisquoi Rd., 59 or 60 Vt.

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THE COURTS.

Supreme Court of the United States.

January 11.

129. The Pacific Nat. Bank of Boston v. Mixter; 130. Same v. Whitney; 440. Same v. Demmon; 439. Butler v. Coleman. Argument concluded.

431. Sargent v. Massa. Hospital Life Ins. Co. Decree affirmed.

182. Bucher v. Cheshire R. R. Co. Argued.

January 12.

660. The People of the State of California v. The Central Pacific R. R. Co.; 661. Same v. The Southern Pacific R. R. Co.; 662. Same v. The Northern Ry. Co.; 663. Same v. The California Pacific R. R. Co.; 664. Same v. The Central Pacific R. R. Co.; 1157. Same v. The Central Pacific R. R. Co. Argued.

January 16.

575. The N. O. Pacific Ry. Co. v. The U. S. Judgment affirmed.

1064. The U. S. v. Gleason. Judgment reversed.

117. Searle v. School Dist. No. 2, Lake Co., Cal. Judgment reversed.

68. The Union R. R. Co. v. Dull. Decree affirmed.

307. Baker v. Power. Motion to dismiss denied.

750. Hartranft v. Lanfeld. Motion to advance granted.

910. Walker v. Walker. Motion to advance granted.

1267. Carpenter v. Strange. Motion to dismiss or affirm submitted.

1255. Felix v. Scharnweber. Motion to dismiss submitted.

Supreme Court of the District of Columbia.

GENERAL TERM.

January 10.

Reynolds v. Smith. Argued and submitted.

Charles P. Montgomery appointed examiner in chancery.

January 11.

Wilson v. Hartford. Appeal dismissed.

January 17.

Daniel O. Driscoll, of Ohio, was admitted to the bar.

Oscar Dunlap et al. v. The Commissioner of Pensions. Set for Monday, January 23.

James Pitting v. The District Commissioners. Peremptory writ of mandamus ordered.

IN EQUITY.—New Suits.

January 7.

10950. Sigmund Gutwillig et al. v. Earnest D. Mayer et al. For injunction, receiver, account and discovery. Com. sol., L. Tobriner.

10951. Charles Walter v. Solomon Schlomberg et al. To declare a lien and to sell part of lot. Com. sol., W. K. Duhamel.

10952. Mary M. Ellis v. Thomas C. Ellis. For divorce. Com. sol., B. A. Lockum.

January 9.

10953. Howard Wheelan, alleged lunatic, upon petition of Anna Fitzpatrick. To enquire into alleged lunacy. Com. sol., J. Fullerton.

10954. Fannie W. McDaniel v. Robert McDaniel. For divorce. Com. sol., C. Carrington.

January 11.

10955. Wanstall Bros. v. Horace S. Cummings. For specific performance. Com. sol., D. O'C. Callaghan.

10956. John Towles v. Mary A. Downman et al. For conveyance. Com. sol., F. T. Browning.

10957. John Robinson v. Same. For conveyance. Com. sol. same.

10958. James Glasgow v. Same. For conveyance. Com. sol., Same.

10959. Charles A. Bradford and wife v. Anna Castell et al. To remove cloud off title. Com. sols., Fendall and Dumont.

January 12.

10960. George Emmert et al. v. Henry M. Gieseking et al. To sell real estate. Com. sols., Morris & Hamilton.

January 13.

10961. Laura V. Cowling et al. v. Blanch Cowling et al. For partition by sale. Com. sols., Brown and Duvall.

January 14.

10962. Robert Johnson v. Elizabeth Johnson. For divorce. Com. sol., J. Ambler Smith.

10963. Catherine Borrows v. John G. Meyers. For account. Com. sols., Briggs and Callaghan.

10964. Edw. Stolpe v. Mathilda B. Stolpe. For divorce. Com. sol., R. T. Morsell.

10965. Ellen Neale v. John T. Neale. For divorce. Com. sol., W. W. Boarman.

January 17.

10966. Theodore Sonnerman v. Bessie Johnson et al. Judgment creditor's bill. Com. sol., E. H. Thomas.

CIRCUIT COURT.—New Suits at Law.

January 7.

28358. Simon Lerg et al. v. Earnest D. Mayer et al. Acc't, $220.65. Plffs attys, Garnett and Mackall.

28359. The N. Y. Belting and Packing Co. v. Austin P. Brown. Note, $525. Plffs attys, Same.

January 9.

28360. George W. Cissell v. John F. Forsyth. Judgment of Justice O'Neal, $52.75. Plffs atty, S. A. Cox.

28361. Eleazer Harmon et al. v. James Fitzpatrick. Acc't, $221.22. Plffs attys, Wilmarth and Storrs.

28362. Charles A. Beavans et al. v. Gustav Geiger. Notes, $260. Plffs attys, Edwards & Barnard.

January 10.

28363. Wm. G. Moore et al. v. Frank E. Middleton. Note, $2,422. Plffs atty, W. H. Dennis.

28364. Michael Shea v. Anastatia Patten. Account, $658.10. Plffs atty, J. M. Johnston.

January 11.

28365. Wm. Updegraff et al. v. Earnest D. Mayer et al. Acc't, $319.88. Plffs attys, Garnett and Mackall.

28366. Herman A. Sellgson v. Wm. T. Rowe. Judgment of Justice Buckley, $47.26.

28367. James L. Barbour v. Edward P. McCeney. Note, $490. Plffs atty, L. C. Williamson.

January 12.

28368. James G. Johnson et al. v. Earnest D. Mayer et al. Acc't, $376. Plffs attys, Carusi & Miller.

28369. Charles P. Brooks v. The Gold Mining Co. of Arizona. Appeal. Defts atty, J. B. Shipman.

28370. The U. S. ex rel. James Pilling v. Comm'rs of Dist. of Columbia. Mandamus. Plffs atty, C. Carlisle.

28371. Gershel & Son v. Earnest D. Mayer et al. Account, $888. Plffs atty, Nat. Wilson.

January 13.

28372. Wash. B. Williams v. Josephine R. Reid. Notes, $354.40. Plffs atty, J. J. Wilmarth.

28373. Luchs Bros. v. Wm. H. Campbell, jr. Judgment of Justice Helmick, $60.78.

28374. Goldenburg Bros. & Co. v. Earnest D. Mayer et al. Acc't, $601.26. Plffs attys, Tobriner and Wolf.

28375. Hicht Bros. v. Same. Acc't, $635.41. Plffs attys, Same.

28376. Benjamin & Caspery v. Same. Acc't, $2,115.25. Plffs attys, Same.

28377. The U. S. ex rel. Frank Rose v. John C. Black, Com. of Pensions. Mandamus. Plffs atty, J. G. Bigelow.

28378. Thos. J. Martin & Co. v. Patrick Cox. Account, $243. Plffs attys, Garnett and Mackall.

January 14.

28379. Samuel White & Co. v. Hannah Harrison & Co. Certiorari. Defts attys, Cohen & Bendheim.

28380. Leigh Chalmers v. J. W. Parish. Note, $1,500. Plffs atty, J. A. Smith.

28381. Michael Willian v. Alfred B. Mullet. Note, $347.47. Plffs atty, N. H. Miller.

28382. Manhattan Cloak and Suit Co. v. Earnest D. Mayer et al. Acc't, $301. Plffs attys, Tobriner and Wolf.

28383. Albert Waddill et al. Wm. D. Cabell. Va. judgment, $1,166.66 and $7.33 costs. Plffs atty, St. J. Fillette.

January 16.

28384. Troy Laundry Machinery Co. v. Capital Steam Laundry Co. Acc't, $188.15. Plffs atty, J. J. Darlington.

28385. Anthony Luthy, adm'r, v. Edw. M. Burchard et al. Acc't, $225. Plffs atty, A. B. Duvall.

28386. The Ansonia Clock Co. v. Wm. S. Sammons. Note, $300. Plffs atty, J. F. Hood.

28387. Marshall Field & Co. v. Earnest D. Mayer et al. Account, $478. Plffs atty, W. A. Bliss.

28388. Thomas J. Fisher & Co. v. R. C. Hutchinson et al. Note, $200. Plffs attys, Morris & Hamilton.

January 17.

28389. Louis Steiner et al. v. Earnest D. Mayer et al. Account, $775.59. Plffs atty, L. Tobriner.

PROBATE COURT.—Justice Merrick.

January 13.

Estate Catherine M. Torney. Will filed.

Estate Middleton Mitchell. Will partially proven.

Estate Ann E. Sleater. Commission appointed to take testimony.

Estate Elizabeth D. Lowry. Will admitted to probate, and letters granted M. L. Dunlop and W. Land; bond, $1,000.

Estate Ann Maria Smith. Order of publication.

Estate Jennett P. Mayo. Order to sell stocks.

Estate Elisha Goddard. Will admitted to probate, and ancillery letters granted O. F. Presbrey; bond, $5,000.

Estate John C. Young. Petition for probate of will filed.

Estate Rosina M. Kleiber. Will admitted to probate, and letters granted M. D. Peck; bond, $1,000.

Estate John George Fisher. Letters granted Gottleib Weimer; bond, $600.

Estate Moses Walsky. Simon Wolf appointed adm'r.

Robert Berberrick appointed guardian to Catherine Walter; bond, $1,000.

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J. C. Columbus appointed guardian to orphans of Martha R. Baker; bond, $100.

Rule of Court.

RULE 20 * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles S. Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of January, 1888.

3 HAMILTON E. LEACH, Adm'r, 400 7th st. s. w.

No. 2956. Ad. D. 13. C. M. SMITH, T. M. FIELDS, Proctors

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Moses Walsky**, late of Chicago, Ill., deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1888.

3 SIMON WOLF, Adm'r, 921 F st. n. w.

No. 2953. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary A. Roth**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of January, 1888.

2 JAMES M. JOHNSTON, Ex'r,

No. 2947. Ad. D. 13. Fendall Law Building.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ambrose W. Thompson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.

3 CELESTE THOMPSON, Ex'x, 1720 H st. n. w.

No. 2934. Ad. D. 13. M. F. MORRIS, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration d. b. n. c. t. a. on the personal estate of **Ann C. Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July, 1888, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of January, 1888.

3 GEORGE F. APPLEBY, Adm'r d. b. n. c. t. a. of the estate of Ann C. Carroll, dec'd.

No. 1086. Ad. D. 10.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John M. Barclay**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.

3 JAMES R. YOUNG, Ex'r, 1506 Q st. n. w.

E. B. Hay, Pooctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of January, 1888.

3 JAMES WILKINSON, Ex'r, 1435 Q st. n. w.

No. 2920. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

D. Appleton & Co. v. Eufemio Abadiano. } No. 28,301. At Law.

On motion of the plaintiffs, by Mr. Maddox, their attorney, it is ordered that the defendant, Eufemio Abadiano, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the goods and chattels of defendant, attached by the Marshal in the hands of S. P. Langley, Secretary of the Smithsonian Institution, December 10, 1887, to the satisfaction of a claim of the plaintiff's for $1,217.90, with interest and costs, as claimed in the above-entitled cause.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

3 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of January, 1888.

Jennie A. Smith v. Edward A. Smith. } Equity. No. 10,824.

And now, to-wit, January 13th, 1888, on motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

And that notice hereof be published once a week for three successive weeks in the Washington Law Reporter and the National Republican.

The object of this suit is to obtain a divorce on the ground of non-support and desertion.

By the Court. WM. M. MERRICK, A. J.

True copy. Test: R. J. MEIGS, Clerk, &c.

3 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 13th, 1888.

In the case of George A. Smith, Administrator o **David Smith**, deceased, the Administrator aforesaid has with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

3 Test: DORSEY CLAGETT, Register of Wills.

No. 2584. Ad. D. 13. WM. TWOMBLEY, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of January, A. D. 1888.

Henry Wise Garnett, Trustee, Plff.
v,
Martin Coryell et al., Defts. } Eq. No. 10,137.

On motion of the complainant, by Conway Robinson, jr., and D. S. Mackall, his solicitors, it is, this 5th day of January, A. D. 1888, by the Court, ordered that the defendants, **Alice C. Erismann, Emma L. C. Ayers** and **Torbert Coryell**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a conveyance from the defendants to this cause, as the sole heirs-at-law of Lewis S. Coryell, deceased, of the property devised to George W. Riggs, trustee, as to which the complainant has been substituted in place of said Riggs as trustee.

By the Court. WM. M. MERRICK, A. J.
True copy. Test. R. J. MEIGS, Clerk, &c.
3 By H. W HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Matthew G. Emery, Jr.**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.
3 HELEN L. EMERY, Ex'x, 411 Fourth st. n. w.
No. 2939. Ad. D. 13. W. K. DUHAMEL, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Wilhelmina Walter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.
3 WM. G. WALTER, Ex'r, 1113 5th st. n. w.
No. 2948. Ad. D. 13. FERDINAND SCHMIDT, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Michael McAllister**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of January next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 11th day of January, 1888.
her
3 MARGARET ⋈ McALLISTER, Ex'x.
mark.
No. 2948. Ad. D. 13. D. O'C. CALLAGHAN, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

January 13th, 1888.

In the matter of the Estate of **Agnes Maria Smith**, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, having been made by Blair Lee, of Montgomery Co., Md.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of February, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Evening Star previous to the said day.

By the Court. WM. M. MERRICK, Justice.
3 Test: DORSEY CLAGETT, Register of Wills.
No. 2935. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

Edward Mitchell
v.
Chloe Ann Mitchell et al. } No. 10,737. Equity Docket 27.

On motion of the complainant, by Messrs. Campbell Carrington and J. G. Bigelow, his solicitors, it is ordered that the defendants, **Martha Jane Sands, Josephine Filmore**, and **Mary Douglas**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside the deed of conveyance dated May 7, 1885, of subLot 74, in square 510, situate in the city of Washington, D. C., to defendants, Lucy, Jane, Mary and Josephine Mitchell, and to sell the same, and to distribute the proceeds between the complainant and the infant defendants, Alice, Henrietta and Daniel Mitchell.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William E. Howard**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.
2 H. E. HOWARD, Ex'x, 1828 H st. n. w.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William H. Emory**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.
2 MATILDA W. EMORY, Ex'x, 1718 H st.
No. 2940. Ad. D. 13. Woodbury Blair, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

Mary C. Lane et al.
v.
Mahaly Crawford et al. } No. 10,924. Docket.

On motion of the plaintiffs, by Mr. James H. Smith, their solicitor, it is ordered that the defendants, **William A. Barnaclo** and **Carrie Smith**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to appoint a trustee under a deed of trust described in the proceedings in this cause, in place of Jonathan W. Barnaclo, "deceased," empowering him to release the real estate described therein, the debt secured thereunder having been paid.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
1 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 4th, 1888.

In the case of Anna M. Maulsby and Ida Corson, Executrices of **George Maulsby**, deceased, the Executrices aforesaid have, with the approval of the Court, appointed Friday, the 10th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

1 Test. DORSEY CLAGETT, Register of Wills.
No. 2504. Ad. D. 13. M. ASHFORD, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,
December 19th, 1887.

In the case of Josephine Stewart, Administratrix of William McClure Stewart, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

52 Test. DORSEY CLAGETT, Register of Wills.
No. 2259. Ad. D. 12. IRVING WILLIAMSON, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William E. Burris et al. v. George W. Thecker, jr. } 10,788. Equity Docket 27.

Upon consideration of the trustee's report of sale, it is by the Court, this 23d day of December, A. D. 1887, ordered, adjudged and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown to the Court on or before the 24th day of January next.

Provided a copy of this order be published according to the usual rules.

* * * * * * * * * * * *

WM. M. MERRICK, *A. J.*

A true copy. Test: R. J. MEIGS, Clerk, &c.
52 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Edward Bennett, late of the District of Colmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of December, 1887.

her
1 MARY M. ⋈ BENNETT, Adm'x c. t. a.,
mark.
1624 10th street n. w.

No. 2?12. Ad. D. 13. C. H. CRAGIN, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Brown, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of December next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 29th day of December, 1887.

her
1 MARY E. ⋈ BROWN, Ex'x, 410 D st. s. e.
mark.

No. 2900. Ad. D. 13. DAN'L O'C. CALLAGHAN, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

Eliza E. P. Frankland v. Henry G. Frankland. } No. 10,831. Equity Docket 27.

On motion of the plaintiff, by Mr. James P. Tustin, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the ground of cruelty, desertion, non-support, and for custody of child.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
1 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
December 23rd, 1887.

In the case of Charles D. Fowler, Administrator of Catherine Manahan, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 20th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

52 Test: DORSEY CLAGETT, Register of Wills.
No. 2346. Ad. D. 12. WM. TAYLOE SNYDER, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBJA.

Holding a Special Term for Orphans' Court Business.
December 23rd, 1887.

In the case of John Fegan and Frank Hume, Executors of Peter Fegan, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 27th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

52 Test. DORSEY CLAGETT, Register of Wills.
No. 2428. Ad. D. 12.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of January, 1888.

Annie L. Kerby v. Frank A. Kerby. } No. 10,808. Docket 27.

The Marshal having returned the defendant "Not to be found," on motion of the plaintiff, by Mr. Fred. W. Jones, her solicitors, it is ordered that the defendant, Frank A. Kerby, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is procure a divorce from the defendant upon the grounds stated in the bill, which are adultery and cruelty of treatment.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of December, 1887.

Albert Gleason et al. v. Cornelia Priscilla Luce et al. } No. 10,847. Equity Docket 27.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Cornelia Priscilla Luce, Bleecker Luce, Charlotte E. Luce, Sarah B. Cooke and Charles M. Cooke, her husband, William Luce, Margaret P. Rector and Elias Rector, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree to direct defendants to make conveyance to complainants of all the legal interest or estate in and to parts of original lots one (1) and fifteen (15), in square two hundred and twenty-two (222), in the city of Washington, District of Columbia, which may have passed to them or any of them, under or by the will of John B. Luce, deceased, or descended to them or any of them as his heirs-at-law.

By the Court. WM. M. MERRICK, Justice, &c.
True Copy. Test: R. J. MEIGS, Clerk, &c.
52 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 6th, 1888.

In the case of Edgar P. Berry, Administrator of **Maria Berry**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

2 Test: DORSEY CLAGETT, Register of Wills.

No. 2550. Ad. D. 13. Chas. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 5th, 1888.

In the case of George T. Dunlop, Executor of **Edwin D. Hartley**, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 27th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

2 Test: DORSEY CLAGETT, Register of Wills.

No. 2565. Ad. D. 13. C. M. & H. S. MATTHEWS, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of January, 1888.

Clara B. Harrison v. **William H. Harrison.** } No. 10,886. Docket 27.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce on the ground of desertion.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Ida L. Neagle v. **John L. Neagle.** } No. 10,906. Equity Docket 27.

On motion of the plaintiff, by Mr. Rogers, her solicitor, it is ordered that the defendant cause his appearance to be entered herein or on before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published for three weeks in the Washington Law Reporter.

The object of this suit is to procure an absolute divorce on the ground of cruelty.

By the Court: WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis P. Shoemaker v. **Francis D. Shoemaker et al.** } No. 10,821. In Equity.

Upon consideration of the report of William G. Johnson, trustee, this day filed, it is by the Court, this 9th day of January, 1888, ordered that the sale of part of lots numbered fourteen (14) and sixteen (16), in square numbered five hundred and one (501), to Andrew J. Sanford, for eighteen hundred dollars ($1,800), as reported by the said trustee, be and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before February 10th, 1888.

Provided that a copy of this order be published for three successive weeks in the Washington Law Reporter before said day.

WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

George Menke v. **Edward Wilde et al.** } Eq. No. 10,905. Docket No. 27.

On motion of the plaintiff, by Mr. Thomas B. Higgins, his solicitor, it is ordered that the defendants, **Edward Wilde**, **Elizabeth Wilde**, his wife, **Edward Hesselgrave**, **Emma Eliza Hesselgrave**, his wife, **George Thomas Hesselgrave**, **Elizabeth Hesselgrave**, his wife, **Haywood Hesselgrave**, **Eliza Hesselgrave**, his wife, **Mary Jane Owen**, **William Owen**, her husband, and **Eliza Ann Hesselgrave**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud off title to lot five (5), in square four hundred and eighty-four (484).

By the Court. WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

John W. Collins v. **Wm L. Lyon and Chas. A. Conklin, trading under the firm name and style of Lyon, Conklin & Co.** } No. 10,096. Equity Docket 26.

On motion of the plaintiff, by Messrs. Meloy & Steuart, his solicitors, it is ordered that the defendant, **William L. Lyon**, of the firm of **Lyon, Conklin & Co.**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree declaring the forfeiture of the assignment by the plaintiff to Lyon, Conklin & Co., of an interest in the letters patent of the United States. Nos. 8,570 and 205,786, and to decree a retransfer of such interest.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Sarah M. Starr v. **William W. Metcalf et al.** } No. 10,858. Docket 27.

On motion of the plaintiff, by Mr. Samuel Maddox, her solicitor, it is ordered that the defendants, **John H. Cooper** and **Mary Cooper**, his wife, **Isaac Cooper** and **William Smith**, infant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is the appointment of a trustee in the place and stead of said William W. Metcalf, to execute the powers created by a certain deed of trust made and executed on the 27th day of January, A. D. 1877, by one Lysander Cooper, late of said District, deceased, and defendant, Louisa Cooper, his wife, as the same is recorded among the land records of said District, in Liber No. 840, at folio 355 et seq.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Allen C. Clark v. **Robert C. Walsh et. al.** } In Equity. No. 10,903. Docket 27.

Upon motion of the plaintiff, by Mr. Daniel O'C. Callaghan, his solicitor, it is ordered that the defendants, **Robert Corres Walsh**, **Virginia Walsh**, his wife, **Anna Wood Walsh**, **George Washington Walsh**, and **George Washington Walsh, Trustee**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to clear of cloud title to original lots twenty, twenty-one, twenty-two and twenty-three, in square six hundred and fifty-one, in Washington, D. C., and for their partition.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

Edward Mitchell v. Chloe Ann Mitchell et al. } No. 10,737. Equity Docket 27.

On motion of the complainant, by Messrs. Campbell Carrington and J. G. Bigelow, his solicitors, it is ordered that the defendants, Martha Jane Sands, Josephine Filmore, and Mary Douglas, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside the deed of conveyance dated May 7, 1885, of sublot 74, in square 510, situate in the city of Washington, D. C., to defendants, Lucy, Jane, Mary and Josephine Mitchell, and to sell the same, and to distribute the proceeds between the complainant and the infant defendants, Alice, Henrietta and Daniel Mitchell.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William E. Howard, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.
2 H. E. HOWARD, Ex'x, 1828 H st. n. w.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Emery, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.
2 MATILDA W. EMORY, Ex'x, 1718 H st.
No. 2940. Ad. D. 13. Woodbury Blair, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

Mary C. Lane et al. v. Mahaly Crawford et al. } No. 10,924. Docket.

On motion of the plaintiffs, by Mr. James H. Smith, their solicitor, it is ordered that the defendants, William A. Barnacle and Carrie Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to appoint a trustee under a deed of trust described in the proceedings in this cause, in place of Jonathan W. Barnacle, "deceased," empowering him to release the real estate described therein, the debt secured thereunder having been paid.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
1 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 4th, 1888.

In the case of Anna M. Maulsby and Ida Corson, Executrices of George Maulsby, deceased, the Executrices aforesaid have, with the approval of the Court, appointed Friday, the 10th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrices will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

1 Test. DORSEY CLAGETT, Register of Wills.
No. 2594. Ad. D. 13. M. ASHFORD, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 16th, 1887.

In the case of James W. Sinclair, Executor of Richard Crutt, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 13th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

51 Test. DORSEY CLAGETT, Register of Wills.
No. 2534. Ad. D. 13. EDWARDS & BARNARD, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 16th, 1887.

In the matter of the Orphan Children of Martha R. Baker, late of Washington, D. C., deceased.

Application for Letters of Guardianship of the minor children of the said deceased has this day been made by Charles J. Columbus.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of January, 1888, next, at 12 o'clock m., to show cause why the said petitioner should not be appointed guardian of said children as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
51 Test: DORSEY CLAGETT, Register of Wills.
RICHARDSON and ELLIOT, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of December, 1887.

Albert Gleason et al. v. Cornelia Priscilla Luce et al. } No. 10,847. Equity Docket 27.

On motion of the plaintiffs, by Mr. Henry Wise Garnett, their solicitor, it is ordered that the defendants, Cornelia Priscilla Luce, Bleecker Luce, Charlotte E. Luce, Sarah B. Cooke and Charles M. Cooke, her husband, William Luce, Margaret P. Rector and Elias Rector, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree to direct defendants to make conveyance to complainants of all the legal interest or estate in and to parts of original lots one (1) and fifteen (15), in square two hundred and twenty-two (222), in the city of Washington, District of Columbia, which may have passed to them or any of them, under or by the will of John B. Luce, deceased, or descended to them or any of them as his heirs-at-law.

By the Court. WM. M. MERRICK, Justice, &c.
True Copy. Test: R. J. MEIGS, Clerk, &c.
52 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 3d, 1888.

In the case of Louisa V. Robinson, Administratrix of David F. Robinson, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney, duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

1 Test: DORSEY CLAGETT, Register of Wills.
No. 2550. Ad. D. 13. C. M. & H. S. MATTHEWS, Proctors

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U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
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WM. STONE ABERT, - - - - - Editor

VOL. XVI. - - - - - - - No. 4

WASHINGTON, D. C. - - - - JANUARY 25, 1888

Mr. Justice Lamar.

Mr. L. Q. C. Lamar, recently appointed by President Cleveland to fill the place upon the bench of the Supreme Court of the United States, made vacant by the death of Mr. Justice Woods, entered upon the duties of his new office on Wednesday last, in the presence of the full bench.

There was quite a large attendance of members of the bar, and the memorable occasion was particularly graced by the presence of many ladies.

Promptly at 12 o'clock the justices, wearing their black silk robes, filed into the court room from an ante chamber, and were immediately followed by Mr. Lamar, who wore a suit of black, and took his seat to the right of Mr. Justice Blatchford and beside Mr. J. H. McKenney, the clerk of the court.

The customary proclamation of the assembling the court was then made, viz.: "The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States: Oyez! oyez! all persons having business before the Honorable Supreme Court of the United States are admonished to draw near and give their attention, for the court is now sitting. God save the United States and this honorable court."

Chief Justice Waite then unrolled a large sheet of parchment, and announced that they had received the commission of L. Q. C. Lamar as Associate Justice of the Court, and ordered that it be read by the clerk, which was accordingly done.

The Chief Justice then enquired: "Is Mr. Lamar ready to take the oath?" Mr. Lamar bowed, and indicated that he was ready. Mr. McKenney handed him a parchment, upon which was inscribed the following oath:

"I, L. Q. C. Lamar, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as associate justice of the Supreme Court of the United States, according to the best of my abilities and understanding agreeable to the Constitution and laws of the United States, so help me God."

Mr. Lamar read the oath in a clear voice, and in completion of the ceremony kissed the bible, which was handed him by the clerk, Mr. McKenney. The newly qualified justice then retired to the corrider in rear of the bench, where he was robed. During his momentary absence, the court and entire audience rose to their feet in respectful welcomé and recognition of the new associate justice, who was then escorted by Marshal John M. Wright to his seat on the extreme left of the Chief Justice.

The justices all bowed to their new associate, who in return bowed to them and to the members of the bar and audience. He then took his seat fully invested with "all the powers, privileges and emoluments" of his high office.

The Supreme Court now sits with its full compliment of nine justices, for the first time since the 4th of May, 1885.

Correction.

The opinion of the Court in General Term, in the case of Raub v. Barbour (reported in last week's issue), was rendered by Mr. Justice Hagner. By an oversight of the printer, his name was omitted.

SUPREME COURT OF THE UNITED STATES.

HUGH MORTRAM BROOKS, Plaintiff in Error, v. THE STATE OF MISSOURI, Defendant in Error.

P. W. FAUNTLEROY and JOHN I. MARTIN for plaintiff in error.

BANTON G. BOONE, Attorney-General of Missouri, for defendant in error.

Motion to dismiss writ of error for want of jurisdiction.

Decided January 23, 1888.

Chief Justice Waite, in announcing the decision of the court, said: "This court is unable to find that the plaintiff in error has been deprived of any right, privilege or immunity guaranteed to him by the Constitution of the United States, and the motion to dismiss for want of jurisdiction is, therefore, granted."

It will be remembered that this is the noted St. Louis murder case, in which it was charged that the defendant, Brooks, alias W. H. L. Maxwell, on the 5th of April, 1885, chloriformed and murdered his friend, C. Arthur Preller, in the Southern Hotel.

The defendant then went to San Francisco, and from thence sailed to Aukland, New Zealand, where he was arrested on board the vessel just as he was about to land.

Upon the arrival of the officers from St. Louis he was taken in charge, and returned with them to this country for trial. He was skilfully defended by able counsel, who took the position

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in behalf of the defendant, that the death of Preller was the result of accident, and wholly unintentional on the part of Brooks, who testified substantially, that he administered the chloriform to Preller in the performance of a surgical operation, and with the consent of the deceased.

The trial resulted in a verdict of guilty of murder in the first degree and a death sentence. The rulings of the trial judge were affirmed by the Supreme Court of the State of Missouri; and from there it was taken to the U. S. Supreme Court, Mr. Justice Miller having signed the citation on the 17th of August last.

The decision of the Supreme Court will now be certified back to the State court, and the defendant, unless executive clemency intervene, will in all probability suffer the extreme penalty of the law.

MANDAMUS.

THE U. S. EX REL. J. K. MCLEAN, Plaintiff in Error, v. WILLIAM F. VILAS, Postmaster-General.

In error to the Supreme Court of the District of Columbia.

Decided January 9, 1888.

1. There is no statutory duty or obligation upon the part of the Postmaster-General to re-adjust salaries of postmasters oftener than once in two years.

2. In special cases it is left entirely to his discretion, as to any more frequent readjustment.

3. Where the record shows that there were not returns from the plaintiff's post-office for two years preceding his demand for readjustment, there is no duty requiring the Postmaster-General to comply with the demand.

Application for writ of mandamus to require the Postmaster-General to readjust the salary of the petioner.

S. F. PHILLIPS and H. SPALDING, for plaintiff in error.

A. H. GARLAND, Attorney-General, and ROBERT A. HOWARD and EDWIN E. BRYANT, Assistant Attorneys-General, for defendant in error.

Mr. Justice MILLER delivered the opinion of the court.

This is a writ of error to the Supreme Court of the District of Columbia.

In the case of United States v. McLean, 95 U. S., 750, will be found the report of the decision of this court in an action instituted by the present plaintiff in error against the United States. The appeal was taken from a judgment of the Court of Claims in favor of McLean for the sum of $569.50, for compensation as deputy postmaster at Florence, Kansas, from April 14, 1871, to July 1, 1872, which was rendered on the the ground that he was entitled to a readjustment of his salary by the Postmaster-General for the period between those dates, and that if such readjustment had been made his salary would have been increased by the amount for which the court rendered judgment in his favor.

This court, however, held on the appeal that the Court of Claims could not perform the duty of readjusting the salary under the acts which conferred that power on the Postmaster-General, and that there was no legal liability against the United States for the amount claimed by him until that officer had readjusted the salary in accordance with those acts of Congress. In its opinion the court suggested that if the executive officer failed to do his duty in that respect he might be constrained by a mandamus to perform it.

Action upon this suggestion, and under the Act of Congress of March 3, 1883, which authorized and directed the Postmaster-General, in proper cases, to make readjustments of salaries which should act retrospectively, Mr. McLean made a demand upon that officer, indeed, he made two demands, one upon Postmaster-General Gresham, and the other upon Postmaster-General Vilas, for such a readjustment. Both of these officers declining to comply with his demand, he, on the 4th day of August, 1886, commenced the present suit in the Supreme Court of the District of Columbia by filing therein his petition for a writ of mandamus.

This petition alleges that McLean served as a postmaster of the fifth class at Florence, Kansas, from or prior to April 14, 1871, to June 30, 1872, and made full returns of the business and receipts of his office on the last day of each quarter to the officer designated by law to receive such returns; that upon the returns made on the 30th of June, 1871, he was allowed and paid a salary of $1.48, and that if paid in commissions upon said returns, under the Act of 1854, he would have received $89.12. He further declares that upon all the returns made by him between July 1, 1871, and July 1, 1872, he was allowed and paid a salary of $7.00, and that if he had been paid in commissions upon said returns, under the Act of 1854, he would have received $568.64. He also alleges that the Postmaster-General refused to readjust his salary as such postmaster during his said term of service, whereby he had been unable to recover his just compensation in the Court of Claims; and further, that under the Act of March 3, 1883 (22 U. S. Stats. at Large, 487), he did, in writing, present his application for such readjustment to William F. Vilas, Postmaster-General, who refused to readjust his salary for the term of service between April 14, 1871, and July 1, 1872, or for any part of that term; and, therefore, prays the court for a writ of mandamus to compel this readjustment.

An amended petition was filed in the lower court, a demurrer to the petition as thus amended was overruled, and the respondent then filed pleas to the jurisdiction of the court to issue a mandamus in the case. He also filed a very elaborate answer, in which many defences were set out, and among others a denial that by a true construction of the statutes by which he was governed in the matter of the readjustment of salaries of postmasters, the plaintiff is now or ever was entitled to such a readjustment. The court below, having issued a rule to show cause why a mandamus should not issue, to which these defences on the part of the Postmaster-General were set up, on final hearing decided in his favor, and discharged the rule. To that judgment the present writ of error is directed.

Before proceeding to examine with minuteness the various statutes on which the arguments turn, it may be well to state in condensed

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shape the two propositions relied on by the contesting parties growing out of the construction of these statutes.

Counsel for the defendant assert the proposition that, under the statutes on this subject, which will hereafter be referred to, there was no obligation resting upon the Postmaster-General to readjust the salaries of these officers oftener than once in two years; that such readjustment, when it took place, could only establish the amount of the salary for two years thereafter, and that no such readjustment could be made unless there were quarterly returns for two years preceding such readjustment on which it could be based.

Counsel for the plaintiff, on the other hand, insist that whenever, upon the filing of any quarterly return by a postmaster of the third, fourth or fifth class, it is shown that the salary allowed is ten per cent. less than it would be on the basis of commissions under the Act of 1854, then the Postmaster-General shall review and readjust his salary under the provisions of the Act, and that this duty devolves upon him at the end of every quarter when the return of the postmaster for that quarter shows this condition of affairs; so that he is compelled, by this construction of the law, to make this readjustment four times a year if the returns justify it, instead of once every two years, as the counsel for the Postmaster-General contend.

From the beginning of the Government down to the year 1864 postmasters were paid by commissions on the receipts at their offices, ascertained by their quarterly returns of the moneys received for postage stamps, box rents, &c. Until 1836 all postmasters were appointed by the Postmaster-General, and were thence called deputy postmasters. So much of the statute of June 22, 1854, as is pertinent to the consideration of this case, is here inserted:

"That in place of the compensation now allowed deputy postmasters the Postmaster-General be, and he is hereby, authorized to allow them commissions at the following rates on the postage collected at their respective offices, in each quarter of the year, and in due proportion for any period less than a quarter, viz.:

"On any sum not exceeding one hundred dollars, sixty per cent.; but any postmaster at whose office the mail is to arrive regularly between the hours of nine o'clock at night and five o'clock in the morning, may be allowed seventy per cent. on the first hundred dollars;

"On any sum over and above one hundred dollars, and not exceeding four hundred dollars, fifty per cent.;

"On any sum over and above four hundred dollars, but not exceeding twenty-four hundred dollars, forty per cent.;

"And on all sums over twenty-four hundred dollars, fifteen per cent." 10 U. S. Stats. at Large, 298.

In 1864 Congress changed this system of allowing commissions on the amounts received by the postmasters as their compensation, and determined that it should be a fixed salary in lieu of such commissions, and also divided these officials into five classes. So much of this statute as is necessary to be considered in this connection is here inserted:

"SEC. 1. That the annual compensation of postmasters shall be at a fixed salary, in lieu of commissions, to be divided into five classes, exclusive of the postmaster of the city of New York.

"Postmasters of the first class shall receive not more than four thousand dollars, nor less than three thousand dollars;

"Postmasters of the second class shall receive less than three thousand dollars, and not less than two thousand dollars;

"Postmasters of the third class shall receive less than two thousand dollars, and not less than one thousand dollars;

"Postmasters of the fourth class shall receive less than one thousand dollars, and not less than one hundred dollars;

"Postmasters of the fifth class shall receive less than one hundred dollars.

"The compensation of the postmaster of New York shall be six thousand dollars per annum, to take effect on the first day of July, eighteen hundred and sixty-four; and the compensation of postmasters of the several classes aforesaid shall be established by the Postmaster-General under the rules hereinafter provided.

"Whenever the compensation of postmasters of the several offices (except the office of New York) for two consecutive years next preceding the first day of July, eighteen hundred and sixty-four, shall have amounted to an average annual sum not less than three thousand dollars, such offices shall be assigned to the first class; whenever it shall have amounted to less than three thousand dollars, but not less than two thousand dollars, such offices shall be assigned to the second class; whenever it shall have amounted to less than two thousand dollars, but not less than one thousand dollars, such offices shall be assigned to the third class; whenever it shall have amounted to less than one thousand dollars, but not less than one hundred dollars, such offices shall be assigned to the fourth class; and wherever it shall have amounted to less than one hundred dollars, such offices shall be assigned to the fifth class.

"To offices of the first, second, and third classes shall be severally assigned salaries, in even hundreds of dollars, as nearly as practicable in amount the same as, but not exceeding, the average compensation of the postmasters for the two years next preceding; and to offices of the fourth class shall be assigned severally salaries, in even tens of dollars, as nearly as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding; and to offices of the fifth class shall be severally assigned salaries, in even dollars, as nearly as practicable in amount the same as, but not exceeding, such average compensation for the two years next preceding.

"Whenever returns showing the average of annual compensation of postmasters for the two years next preceding the first day of July, eighteen hundred and sixty-four, shall not have been received at the Post Office Department at the time of adjustment, the same may be estimated by the Postmaster-General for the purpose of adjusting the salaries of postmasters herein provided for.

"And it shall be the duty of the Auditor of the Treasury for the Post Office Department to

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obtain from postmasters their quarterly accounts with the vouchers necessary to a correct adjustment thereof, and to report to the Postmaster-General all failures of postmasters to render such returns within a proper period after the close of each quarter.

"SEC. 2. That the Postmaster-General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal, and notified to the Auditor for the Post Office Department.

"SEC. 3. That salaries of the first, second, and third classes shall be adjusted to take effect on the first day of July, eighteen hundred and sixty-four, and of the fourth and fifth classes at the same time or at commencement of a quarter as early as practicable thereafter.

"SEC. 4. That at offices which have not been established for two years prior to the first of July, eighteen hundred and sixty-four, the salary may be adjusted upon a satisfactory return by the postmaster of the receipts, expenditures, and business of his office." 13 Stats. at Large, 335.

By the Act of June 12, 1866, this act of 1864 was amended by adding the following proviso to its second section:

"Provided, That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the Act of 1854, fixing compensation, then the Postmaster-General shall review and readjust under the provisions of said section." 14 U. S. Stats. at Large, 60.

The law stood on these enactments during the period of McLean's service, except that by the consolidating statute of June 8, 1872. 17 U. S. Stats. at Large, 283. The readjustment of salaries was only obligatory when the compensation was twenty per cent. instead of ten per cent., less than it would have been under the Act of 1854. Its language is as follows:

"SEC. 82. That the salaries of postmasters shall be readjusted by the Postmaster-General once in two years, and in special cases as much oftener as he may deem expedient: and when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is twenty per centum less than it would be on a basis of commission, the Postmaster-General shall readjust the same."

The Act of March 3, 1883, which authorized and directed the Postmaster-General to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes as follows:

"That the Postmaster-General be, and he is hereby authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the Act of July 1, 1864, whose salaries have not heretofore been readjusted under the terms of section 8 of the Act of June 12, 1866, who made sworn returns of receipts and business for readjustment of salary to the Postmaster-General, the First Assistant Postmaster-General, or the Third Assistant Postmaster-General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the Act of 1854; such readjustments to be made in accordance with the mode presented in section 8 of the Act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns, were made: Provided, That every readjustment of salary under this act shall be upon a written application, signed by the postmaster or late postmaster, or legal representative, entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post-office within whose delivery he resides, and which address shall be set forth in the application above provided for." 22 U. S. Stats. at Large, 487.

With the answer of the Postmaster-General are presented as exhibits two opinions of Attorney-General Brewster, given in response to requests of the Postmaster-General; also an opinion by the Assistant Attorney-General for the Post Office Department, and the opinion of Postmaster-General Gresham in a letter to the Hon. Frank Hatton, First Assistant Postmaster-General. All of these sustain the proposition already stated on behalf of the defendant.

These, with the argument of counsel, and the briefs now before us, cover the whole field of controversy. Many objections are taken by the counsel for the defendant which would be worthy of serious consideration if it were necessary to decide them, but as we agree with the Postmaster-General in such a construction of these statutes as shows that they imposed no obligation upon him to make the readjustment of salary claimed by the plaintiff, and as this goes to the merits of the controversy, we prefer to rest the case on this point without any consideration of the others.

Upon a very careful examination of these statutes we are forced to the conclusion that the legislature in these enactments did not contemplate a readjustment of the salaries of any of these officers oftener than once in two years, as a legal duty or obligation upon the part of the Postmaster-General. It is true, undoubtedly, that many cases of hardship might arise for want of a more frequent adjustment. In towns where the population and business grew very rapidly an adjustment made at a time when the compensation would amount to three or four dollars a quarter might be very inadequate, when, if readjusted according to the later returns, the salary might amount to six or eight hundred dollars per annum, while the officer, if he served at all, would be compelled to serve at the inconsiderable compensation originally established.

The answer to this suggestion is, that the Postmaster-General was expressly authorized within his discretion, to make readjustments in

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special cases, upon satisfactory representations, as much oftener as he might deem expedient. The very fact that this discretion was left to him in these special cases, and the rule which should govern him in the exercise of that power, was left to his sense of right and propriety, is an argument against the necessity of any more frequent readjustment than once in two years, as a positive duty arising from proper construction of the statutes.

The Act of 1864, which abolished the system of compensation by a fixed commission on all the receipts at the post office, evidently adopted a principle of establishing a salary for two years, which was to be fixed by a relation in each of the five classes of postmasters, to the amount received at those offices. It enacts that the compensation of the postmasters of the several offices, except the office at New York, for the two consecutive years next preceding the first day of July, 1864, shall be the basis at which the salaries of those offices shall be fixed for the next two years. The second section declares that the Postmaster-General shall review once in two years, and, in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section and of the rates there fixed, the salary assigned by him to any office; and that any change made in such salary shall not take effect until the first day of the quarter next following such order.

Here is a very clear statement that the salaries of these offices are to be fixed once in two years, that this shall be done by the Postmaster General, and that it shall be based upon the receipts at those offices for the two consecutive years next preceding the time when it is made. The manifest purpose of this statute is, first, to change the compensation of the postmaster from a mere fixed commission on the receipts of his office to a regular salary; second, that this salary shall be fixed for a period of two years prospectively; and third, that, owing to the varying amount of receipts at post offices, which may rapidly grow, the Postmaster-General is required to make, on the basis already given, a readjustment once in two years. If, as already said, cases of great hardship, where there is a sudden increase of business, seem to demand a more frequent readjustment, the power to do this is left with the Postmaster-General, but rests entirely in his discretion.

The statutory provision on which it is asserted that a change of this rule rests, so that it is the duty of the Postmaster-General to make a readjustment at the end of any quarter where the return from an office shows that the salary allowed is ten per cent. less than it would be on the basis of the commissions under the Act of 1854, is the proviso found in section eight of the Act of 1866, which reads as follows: "Provided, that when the quarterly returns of any postmaster of the third, fourth or fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the Act of 1854 fixing compensation, then the Postmaster-General shall review and readjust under the provisions of said section."

What quarterly returns are here meant, as showing that the salary is ten per cent. less than the commissions under the Act of 1854? The argument of counsel is, that when any one quarterly return shall show this condition of affairs the Postmaster-General, on the request of the postmaster, must make a readjustment, but such is not the language of the statute. The expression used is, "when the quarterly returns" shall show this, and inasmuch as the law had already established that readjustments must be made on the basis of the quarterly returns for two years, it is reasonable to suppose that that was the meaning of Congress in this proviso.

To require the Postmaster-General, who alone can make these readjustments, to act upon every case where the last quarterly return shows a case for a readjustment, would be imposing a duty which it would be impossible for one man to perform, and which in itself would be an inconvenience not justified by any benefit to the incumbents of such offices. This compensation might vacillate every quarter. A salary might be increased one quarter, and it might be proper to diminish it the next; so that, instead of having a salary, or yearly compensation, as we think the spirit of all the statutes requires, and as it must be prospective, it would be in the end paying a man for a future quarter a compensation which he had earned on a past quarter. The whole spirit of the statutes seems to imply that the returns for the past two years are to be taken as the best conjectural basis that can be obtained for fixing the salary for two years in the future. Before we can adopt such a construction, therefore, as is contended for by plaintiff's counsel, words imperatively declaring such a proposition should be found in the statutes.

The language which is used in the proviso, instead of declaring, as could easily have been done, that the return of every quarter shall be the basis upon which to determine the compensation of the officer for the next succeeding quarter, is "that when the quarterly returns of any postmaster" of the classes specified "show that the salary allowed is ten per centum less than it would be on the basis of commissions under the Act of 1854, fixing compensation, then the Postmaster-General shall review and readjust the salary under the provisions of said section." The provisions of that section, as we have already seen, direct the Postmaster-General to review and readjust the salaries of postmasters once in two years, except in special cases, upon the basis of the preceding section, namely, section 2 of the Act of 1864.

That basis of the preceding section is the returns for the two years consecutively preceding the readjustment. So that, taking the use of the plural, "quarterly returns," instead of the singular, any quarterly return; taking the reference to the second section of the Act of 1864, which is the basis of the whole system, as the provision under which the readjustment shall be made, and the clear statement of that section that the review shall be made once in two years, and shall be based on the provisions of section one of the same statute, which requires returns of two consecutive years, we do not think that the proviso is fairly susceptible of the construction which counsel for plaintiff claim for it.

If that construction be a sound one, the salary for the first quarter under it might not be half

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as much as would be a proper compensation for the preceding quarter on the same basis, and the return of a postmaster for the quarter on which this basis may be made, while doing him no good, might produce a very exaggerated salary for the man who should succeed him at the end of the quarter. We see nothing in this construction which commends it to the wisdom of Congress, and we see nothing in the language used by Congress which requires it. It is in conflict with the opinions of the two able Postmasters-General who have had the question under consideration, as well as with those of the Attorney-General and his assistant, and it is also opposed to our own judgment of its fair meaning, taken in connection with the whole legislation on the subject.

As the record shows that there were not returns from the post office of the plaintiff for two years preceding the time when he demanded that a readjustment should take place, and also that a readjustment was made for the period from July 1, 1872, to July 1, 1874, it is obvious, according to this construction of the statutes, that there is no duty on the Postmaster-General to make the readjustment asked for.

The judgment of the Supreme Court of the District of Columbia is, therefore, affirmed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE PHŒNIX IRON COMPANY v. THE RICHMOND.

EQUITY. No. 9,144.

Decided November 30, 1887.
The CHIEF JUSTICE, and Justices HAGNER and JAMES sitting.

1. A recorded notice of intention to hold a mechanic's lien, which states plainly the intention of the claimant to hold a lien upon the building, clearly describes the property and specifically sets forth the amount claimed and the character of the demand, is sufficient, though there be no formal caption, or although the caption may not be in all particulars critically correct.
2. Section 698, R. S. D. C., makes the date of the completion of the building the point from which the time for the filing of the notice of the lien is to be reckoned, and not the completion of the work.
3. Where an objection that the notice of lien was not filed in time has been waived by the defendant in the lower courts, he cannot afterwards raise it on the hearing of the appeal.
4. A contract to well and sufficiently heat a building about to be built, is performed when the machinery and equipments furnished are sufficient in quality, size and power to heat the building as the same was exhibited in the plans shown to the contractor.

The CASE is stated in the opinion.

R. B. LINES for complainant.

JAMES M. JOHNSTON for defendant.

Mr. Justice HAGNER delivered the opinion of court.

In the spring of 1883, F. H. Paine, the owner of lots at the N. E. corner of H and 17th streets N. W., in this city, undertook the erection of a large building thereon, to be occupied as an apartment house; and in April of that year a contract in writing was entered into between him and the complainants, a manufacturing firm of Trenton, N. J., to construct a steam heating apparatus in the new building, for the sum of $3,500. Paine afterwards sold the property to an association incorporated in New York under the name of "The Richmond," which accepted all the obligations, and became entitled to all the benefits of Paine's contract. The complainants placed in the building all the materials requisite for the work, and received $1,700 on account. They proceeded with the work, and also performed extra work, for an agreed price, but dissensions arose between them and the owners, who claimed that the work had not been properly done, and refused on that ground to complete the payment. Finally, on the 6th of June, 1884, the following notice of an intention to hold a mechanic's lien on the building was filed in the office of the clerk of this court:

THE PHŒNIX IRON COMPANY, a corporation under the laws of New Jersey, Claimant,
v.
JOHN H. HANNA and MAHLON ASHFORD, Trustees of The Richmond, Owner.
890. Notice of Lien.

Notice is hereby given that we intend to hold a mechanics' lien upon parts of lots numbered 23 and 24 in W. B. Hill's trustees and others subdivision of lots in square numbered 165, being 100 feet on 17th street by 30 feet on H street N. W., on the N. E. corner of said streets, in the city of Washington, in the District of Columbia, and the building thereon, for the sum of two thousand three hundred and thirty-seven 10-100 dollars ($2,337.10), due to us from the owners thereof, for labor upon and materials furnished by us in the construction and repairs of heating apparatus of said building under and by virtue of a contract with said owners by their agent.

THE PHŒNIX IRON COMPANY,
Claimant.
pr. ROBERT B. LINES,
Attorney.

The present bill was afterwards filed for the enforcement of the lien. After the defendants had answered, the cause was referred by the justice holding the equity term to the auditor, to ascertain and report from the evidence what amounts, if any, had been expended by defendant to supply work which should have been done by complainant under the contract, or to make good work defectively done by complainant; and what further sum, if any, it would be necessary to expend to supply work omitted, and to remedy work defectively performed by complainant under the contract; and, also, what amount complainant expended, if anything, outside of the sums stipulated to be paid in the contract, to overcome obstacles to the heating of the building caused by defendant's fault.

The auditor filed his report, to which both complainant and defendant excepted, with respect to the results and the principles on which the findings were based.

The decree awarded $1,510.56, and interest

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from March 10, 1884, as due by The Richmond to complainant; declared it to be a lien on the real estate, and directed its sale unless payment was made by a designated day; and disallowed the defendant's cross-demands.

Both complainant and defendant appealed from the decree.

1st. The first objection to the decree relied on by the defendant, in the argument here, is addressed to a supposed defect in the form of the notice of lien, filed by the claimant, which it is insisted asserts that the contract referred to was made with Hanna and Ashford, trustees of The Richmond; whereas the bill sets forth a contract made with or adopted by the Richmond. But we do not think this objection is supported by the words of the notice itself, or even by the caption prefixed, which plainly enough shows that "The Richmond" was the owner of the property referred to, and that the contract was made with The Richmond by its agent.

But we hold it was altogether unnecessary to have attached any such caption, and that a notice is entirely sufficient under Sec. 693, R. S. D. C., which states plainly, as this notice did, the intention of the claimant to hold a lien on the building; clearly describing the lot of ground, and specifically setting forth the amount claimed, and stating that it was for labor and materials furnished in the construction and repair of the heating apparatus in the building constructed on the lot so described.

The notice of intention to hold a lien is required rather in the interest of third persons than of the owner of the property, to the end that subsequent purchasers or incumbrancers resorting to the record for information as to the state of the title in this particular may there be made aware of the existence, amount and character of all demands against the property, in the form of mechanics' liens; and if the notice so filed furnishes all the information requisite to disclose these points of inquiry, the purpose of the law has been gratified, although there may be no formal caption attached; or although the caption may not be in all particulars critically correct.

2d. It is next contended that the decree below should be reversed, because the notice of June 6th, 1884, was not filed within three months after the work of the complainants was completed. The complainants averred in their bill that the apparatus, according to the terms of the contract, was to have been completed by September 1, 1883, but that in consequence of alterations and extra work required, or made necessary by said Paine and the agents of The Richmond, its completion was delayed until the 10th of March, 1884, on which day it was fully completed. If this averment be correct, the notice was filed in time, even if the language of the Act is to be construed as referring to *the completion of the heating apparatus* and repairs, as the point from which the three months is to be computed. The defendant points to the statements of two of the witnesses who testify that the work was finished and the final tests made in February, 1884.

But it appears that from December, 1883, there had been a constant controversy between The Richmond's agents and the Phœnix Company, as to the delays in the completion of the work; and that as late as the 28th of February, the former made a formal demand upon the Phœnix Company that it should forthwith proceed to complete the work. On the 6th of March the complainants made the reply of that date, in which they charge upon The Richmond the responsibility for the delays; assert that their work would have been entirely satisfactory if the building had been in proper condition to receive the apparatus, and refuse to proceed further with the work because of the defendant's default.

Thus it appears that within the three months before the notice was filed, the defendants were insisting that the work was still incomplete; and the complainant was refusing, for the reasons stated, to do further work on the apparatus. It is further proved that in April the complainants were applied to to make good a crack in one of the boilers; and performed the repairs as part of their original obligation and without charge, because such repairs were included in its agreement.

In 6th Wallace, 561 Canal Co. v. Gordon, contractors who had engaged to construct and complete a mining canal by July 1, 1853, addressed a notice to the Canal Co. on the 7th of June, declaring they should hold the contract annulled because of the company's failure to make the payments required by the contract, but also stating, that to allow the company to make other arrangements, they would for six days longer continue the work without charge. On the 13th of July, receiving no reply from the company, they gave a second notification refusing to proceed further with the work, and repeating that they adhered to their former statement that the contract was annulled. In a few days thereafter they filed a notice of their intention to claim a lien on the canal for their work.

By the law of California, no such lien could continue for a longer period than a year after the work was done and materials furnished, unless suit was brought to enforce the same within that time. A bill in equity was filed for the purpose on the 12th of July, 1854, which was more than a year from the date of the first letter of the contractors, but within a year from the date of the second letter. It was insisted by the defendant that the computation of the statute year should not be reckoned from the latter day, because the work performed during that week being voluntary, could not be considered as performed under the contract.

The Supreme Court held, that the failure by the canal company to make the payments, justified the contractors in abandoning the undertaking, and entitled them to recover a reasonable compensation for the work they had actually done, and to enforce it by a mechanic's lien; and that the bill was filed within the statutory time, which should be reckoned from the expiration of the work week during which the work was performed voluntarily; and affirmed the right of the complainants to a lien for their claim for a large sum, which had been found by the master to be the fair value of the work, after crediting a counter-claim of the defendants. The decision in that case was a refusal to rule with strictness against the claim of work-

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men, the very class of persons for whose interest and protection, as has frequently been said, these remedial statutes were enacted.

This objection was made during the argument before us, for the first time in the progress of this litigation. In the case last referred to (6 Wallace, 561), the Supreme Court refused to consider exceptions to the report of the master, which were made for the first time in that argument in that court.

In the defendant's answer, the averments of the 8th paragraph of the bill as to the non-completion of the work until the 10th of March are admitted, though the blame for the delay is charged against the complainant. And although the answer to the 9th paragraph of the bill commences with a general denial, it concludes with the averment that the work is not yet completed.

If the defendants had then intended to insist upon the point now under examination, they ought certainly to have denied the statement in the answer, and then the complainant would have been warned to prepare by his evidence to meet the denial. The testimony of the two witnesses, relied on as showing that the work was completed in February, 1884, I understand simply as a statement that at that date the apparatus had all been placed in position; but not as asserting against the averments of the notice and of the bill, that there was no work done afterwards, as late as the 10th of March, such as must necessarily be performed from time to time, about such an apparatus, whenever experiment and use discloses that it does not work smoothly, and needs the usual readjustment constantly required in such work before it can be received as a successful working machine.

The cause was argued before the justice holding the equity term, without disclosing this defence. The defendants' various exceptions to the auditor's report did not embrace this point; and it was not mentioned in the argument before the justice from whose decree this appeal is taken.

There are certain requirements to be observed in this special proceeding jurisdictional in their character, which parties therefore cannot waive, in such wise that they may not be subsequently renewed. The notice of lien, for example, must describe the property and state the character and value of the work done; and no evidence afterwards can supply the omission of such requirements. But the question as to the date at which the work was completed, is one of fact to be decided, when controverted upon testimony *in pais*. In such an inquiry, the defendant's admission that the work was not completed until the 10th of March, would be competent as a waiver of any subsequent objection that the notice was not filed in time. And after they have by their answer admitted that such was the case, and have for more than three years, in all these various proceedings, waived any insistance upon the point, it is too late to claim for it the favorable consideration of the General Term sitting on appeal in an equity cause. Phillips on Mechanics' Lien, sec. 331.

But a further and conclusive reason exists why we should hold the claim of lien was not filed too late, namely, that the proof shows the building was not completed until after the 10th of March, 1884; and our statute makes the completion of *the building* the point from which the time for the filing of the notice of the lien is to be reckoned, and not the *completion of the work*, as was assumed by the defendant in the argument, and seems to have been acquiesced in by the complainants also. The language of section 693 is explicit, that the workman shall file "within three months after *the completion of the building or repairs*, the notice of his intention," &c. Again, in section 696, the time at which it is provided the lien shall cease to exist, shall be "at the expiration of one year from the completion of *the building or repairs*." In this respect the existing law differs from the provisions of the Maryland Act of 1791, which was made to protect master workmen who might be engaged on buildings in the new Federal city; and from those of the Act of Congress of 1833, ch. —, which provided for mechanics' liens within the District. In both those Acts the period of limitations was to be measured from the performing of the work or furnishing the materials.

If, therefore, we were required to examine this objection so effectively waived by the defendant, we would, for this further reason, pronounce it not well founded.

3d. To the objection that there could be no recovery by the complainants because the architects had not given a certificate that the work had been properly performed, it is enough to say that the provision referred to in the contract required that such certificate should be given of the performance of the work "agreeably to the drawings and specifications made by the architects and signed by the parties thereto and thereto annexed;" "and after the drawings and specifications have been returned to the architects;" whereas it is admitted there never were any such plans and specifications prepared by the architects. The failure to procure such certificates is therefore no more a bar to the complainant's recovery here, than their failure "to erect and finish" the new building, which is gravely left in the contract as one of the items of work to be performed by the Phœnix Company.

4th. It is insisted further that the complainants have claimed in their bill a recovery solely *upon the contract*, while the claim under the evidence is upon a *quantum meruit*.

But the complainant's bill charges that he did not perform the contract, as to some of its elements, because of the delays interposed by the defendant; but nevertheless that ultimately he did all the parties intended he should contract to do; and also prepared extra work and furnished extra materials, and for all this work he claims payment. In such a case where the plaintiff is claiming for the value of what he actually did, the Supreme Court in Dermott v. Ives, 2 Wall., 9, says, "he must produce the contract upon the trial and it will be applied as far as it can be traced; but if by the fault of the defendant the cost of the work or materials has been increased, in so far the jury will be warranted in departing from the contract. In such case the defendant is entitled to recover for the damages he may have sustained by the plaintiff's deviation from the contract not in-

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duced by himself, both as to the manner and time of the performance."

It seems impossible the defendant supposed the complainant was to perform the contract according to its literal terms, for that would have involved an absurdity and practical impossibility on the part of the Phœnix Company, and it is not easy to see how the defendant could insist upon the literal observance only of such of its elements as they regarded as beneficial to themselves. It was practically disregarded as a contract in its strict sense, although such of its terms as were not plainly outside of their understanding, "should be applied as far as they can be traced."

5th. The defendants object that by the true interpretation of the contract, the complainants undertook well and sufficiently to heat The Richmond building; and as their apparatus did not effectually accomplish that result, there should be no recovery here, even though it be shown that the failure of the apparatus to heat the building sufficiently was the result of improper construction of the house itself.

The complainants reply that their apparatus was adequate to the purpose, and would have affected it, except for defects in the design, and in the work on the building, for which the defendants only were responsible. Among other such defects, they complain that the builders left apertures beneath the window sills (to allow, as they explain, for the settling of the structure) large enough to admit quantities of snow, which was found lying on the top of the steam coils; and to allow the rapid escape of the heated air. Also, that the furnace chimney was not built according to the drawings of the building shown to them; and that when it was changed it was still insufficient. Further, that an air chamber entirely too large and injurious to the successful working of the apparatus, was left open over the boiler, which allowed the further waste of quantities of heated air; and that part of the heat required for the working of the apparatus, was without their knowledge or consent, diverted to warm the water in a large tank, for use in the bath rooms.

To hold that the undertaking of the complainants was absolutely to heat the building, in the face of such defects and charges, would, as argued by the complainants counsel, be practically to decide that the house must be adquately heated by the machine though the roof were left off.

We think the auditor's view of the final obligation of the complainants respecting this work is correct—that the apparatus to be constructed with its machinery and equipments, was to be sufficient in quality, size and power to heat the building, as the same was exhibited in the original and amended plans shown to the complainants.

The amount due them according to this theory, the auditor found is fairly represented by the sum of $2,337.10, and without going into any discussion of the testimony on the point, we content ourselves with saying that we approve of this finding after carefully examining the proof.

He also reports that the condition in which the work was found after it had been left by the complainants, required the expenditure of a considerable sum of money to pay the Baltimore workmen employed by the defendant, and we think the distinction of this expenditure between the complainant and the defendants by the auditor is reasonable and just. If we are to take the testimony of the complainants witnesses, several of whom appear very intelligent and well informed as to the subject, some of this work of the Baltimore workmen was needless; while other parts were rendered requisite by the fault of the defendants. But it nevertheless seems to be established, that there were some defects in the complainant's work, as for example, in the insufficient size of the supply pipes; and upon the whole we incline to the opinion that the auditor's statement comes as likely to be correct as we would expect any conclusion by this court on the point to prove.

We therefore think the justice below decided the case correctly and according to its substantial justice, when he decreed that the sum of $826.59, stated as the off-set allowed to the defendant, should be credited upon the complainant's claim, and that the residue should be established as a lien on the property, with interest from March, 1884.

We see nothing in the testimony to justify us in allowing the large amount claimed by the defendant for alleged loss of rent by reason of the defects in the apparatus. Whether the assumed loss of patronags would equally have occurred if the apparatus had been satisfactory; or whether other causes of dissatisfaction, such as present themselves every day in hotels and apartment-houses, where no fault can be justly found with the contrivance for heating, should be chargeable with part or all of the loss; or whether the absence of lodgers saved money which under an unskilful management would have resulted in loss instead of profit, so that the smaller number of boarders may have been a saving, are considerations that may be so much effected by a variety of contingencies; and may depend so much upon the whimsicalities of the expected lodgers, that it would be most unsafe for us, upon the one-sided statement presented by the testimony to allow the defendant's claim.

If such unliquidated counter-claims could be sustained, in such a form of proceedings as this (which we do not intend to decide) the elements essential to an intelligent examination of their merits should be more fully placed before us.

The decree below is affirmed.

SUPREME COURT OF PENNSYLVANIA.

WILLIAM ROMMEL v. JACOB SCHAMBACHER.

A tavern keeper who sells liquor to a minor until he becomes drunk and then, in the tavern, permits another person, who has also become drunk there, to fasten a paper to the minor's clothing and set fire to it, is liable in damages to the minor for the injuries so inflicted.

Decided Oct. 10, 1887.

Error to Common Pleas No. 4 of Philadelphia County, to review a judgment of compulsory nonsuit in an action of trespass on the case.

THE FACTS are stated in the opinion.

The assignments of error specified the re-

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fusal of the court below to take off the nonsuit.

HENRY D. WIREMAN, for plaintiff in error.

The fact that defendant, the proprietor, was present before and at the time plaintiff was set on fire, makes him liable to plaintiff in damages for the injuries received.

Principals in the second degree are those who are present aiding and abetting the commission of the act. Bouvier, Law Dict., new ed., p. 460.

The law recognizes no difference between the offence of principals in the first and second degree. 1 Arch. Crim. Law, 66, 67.

Under the evidence a jury might well find that defendant enjoyed the practical joke, until the *denouement*, as much as any one in the bar room; that he looked directly at plaintiff; that he held plaintiff in conversation, in order that the act could be successfully committed; that he was standing behind the bar, facing those in the room, and that he had a full and clear view in front of him; and that the room was small, the average bar only being a few feet high.

If there be any question of fact for the jury, it is error to enter a compulsory nonsuit. Prutzman v. Bushong, 83 Pa., 526.

A prayer for a nonsuit is in effect a demurrer to the evidence; if, therefore, there be any evidence, however slight, from which the jury can draw an inference favorable to plaintiff, it must be submitted to them. Maynes v. Atwater, 6 N. W. C., 535.

An innkeeper is responsible for the acts of his servants and guests. An inn keeper is bound to exercise an exact vigilance over all persons coming into his house as guests or otherwise. Houser v. Tully, 62 Pa., 94; Walsh v. Porterfield, 87 Pa., 376; Mason v. Thomson, 9 Pick., 280; Sibley v. Aldrich, 33 N. H., 553; Shaw v. Berry, 31 Maine, 478.

Innkeepers and tavern keepers are synonymous in Pennsylvania. Houser v. Tully, 62 Pa., 94.

Coming for temporary refreshments constitutes one a guest. McDonald v. Edgerton, 5 Barb., 510; Clute v. Wiggins, 14 Johns., 176; 2 Kent, Com., 293.

It is not necessary that one should have food and lodging to be a guest; the purchase of liquor makes him a guest; and if he is robbed while drinking, the inkeeper is liable. Cundy v. Lecocq, 23 Am. Law Reg., 768.

If there be any evidence of negligence on the part of the defendant, it must be submitted to the jury. Murphy v. Crossan, 98 Pa., 495.

In an action for negligence the question of proximate and remote consequences is for the jury. Tice v. Hunn, 94 N. Y., 621; Lak v. Milliken, 52 Maine, 240; Fairbanks v. Kerr, 70 Pa., 86.

The analogy between the duties of common carriers to protect their passengers against injuries from third persons, and the duty of inn or tavern keepers to protect their guests against injuries from third persons is pertinent.

Conductors on cars have control over the passengers and are as responsible for its exercise as for properly running the trains. Drunken men should not be permitted on the cars, or if so, should be so guarded or separated from the orderly part of the passengers as to prevent injury to them. Pittsburg & C. R. R. Co. v. Pillow, 76 Pa., 510.

Plaintiff was a minor; he entered the saloon sober, and defendant made him drunk.

The injury received by plaintiff was a natural consequence of the illegal act of defendant in selling liquor to intoxicated persons.

In Henry v. Dennis, 93 Ind., 452, defendant left an open barrel of fish brine in a city street. Another person without his knowledge or authority emptied the barrel into the street. The plaintiff's cow, lawfully running at large in the street, drank the brine and was killed, and the defendant was held liable.

The defendant not only sold intoxicating drinks to plaintiff when he was a minor, but did it when plaintiff was intoxicated or drunk, contrary to the Act of Assembly of May 8, 1854.

The unlawful act caused Flanagan to perpetrate a drunken deed, and made plaintiff oblivious to his danger.

For the consequences of this unlawful act defendant is clearly liable in damages.

Under the Act of April 15, 1851, and Act of May 8, 1854, a widow may maintain an action for damages against an innkeeper for furnishing her husband liquor when intoxicated, in consequence of which he falls under the wheel of his wagon and is killed. Fink v. Garman, 40 Pa., 95.

CHARLES H. DOWNING, for defendant in error.

Section 1 of Act of May 8, 1854, does not apply to this case, as the remedy should have been by a prosecution under said act, not an action for damages.

Fink v. Garman, 40 Pa., 95, was a suit brought by a widow for damages for the loss of her husband, and has no application to the case under consideration.

There being no evidence produced to show knowledge on the part of the defendant, the court below was therefore right in entering a nonsuit.

Chief Justice GORDON delivered the opinion of the court.

From the evidence in this case we gather the following facts:

On the evening of the 9th of August, 1884, the plaintiff, William Rommel, a minor, entered the tavern of the defendant, Jacob Schambacher, and there found one Edward Flanagan; they both became intoxicated on liquor furnished them by Schambacher. While the plaintiff was standing on the outside of the bar, engaged in conversation with the defendant, who was in the inside thereof, Flanagan pinned a piece of paper to Rommel's back and set it on fire. The consequence was that Rommel's clothes were soon in flames, and before they could be extinguished he was very badly injured. He brought the present suit to recover damages from the defendant, for the injury thus sustained.

The court below adjudged the facts as stated above to be insufficient to sustain the plaintiff's case, and directed a nonsuit. In this we think it made a mistake. There is no doubt that the defendant, from the position he occupied, had a full view of the room outside of the bar, and did see, or might have seen, all that was going on in it. If, in fact, he did see Flanagan setting fire to the plaintiff, and did not interfere to protect his guest from so flagrant an outrage, his responsibility for the consequences in un-

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doubted. If, on the other hand, he was guilty of making Flanagan drunk, or if he came there drunk, and Schambacher knew that fact, he was bound to see that he did no injury to his customers.

All this is a plain matter of common law and good sense, and does not depend on the Act of 1854 or any other statute. Where one enters a saloon or tavern opened for the entertainment of the public, the proprietor is bound to see that he is properly protected from the assaults or insults, as well as of those who are in his employ, as of the drunken and vicious men whom he may choose to harbor.

To illustrate the principle here stated we need go no farther than the case of Pittsburgh & C. R. R. Co. v. Pillow, 76 Pa., 510. In the cases cited, a drunken row occurred on board one of the defendants's cars, and during the quarrel a bottle was broken, and a piece of the glass struck the plaintiff, a peaceable passenger, in the eye and put it out; held, that the company was responsible for the injury thus done.

In the opinion of this court this language was used:

"The plaintiff lost his eye through the quarrel of a couple of drunken men, who should not have been permitted aboard the cars, or if so permitted, should have been so guarded or separated from the sober and orderly part of the passengers that no injury could have resulted from their brawls.

If, then, a railroad company is liable for the conduct of drunken men who may chance to board its cars, much more the tavern-keeper who not only permits drunken men about his premises, but furnishes liquor to make them drunk, and who is thus instrumental in fitting them for the accomplishment of just such an insane and brutal trick as that disclosed by the evidence of the case in hand.

The judgment of the court below is now reversed, and a new venire ordered.

COURT OF APPEALS OF MARYLAND.

ABSTRACT OF DECISION.

YEARLY, Ex'r, v. COCKEY, Adm'r.

Administration Accounts—Opening the same for Errors—Unreasonable Delay and Laches in Asserting Rights.—1. A matter once settled without any imputation of fraud, and deliberately acquiesced in by all the parties in interest for a long period of time, ought not to be disturbed.

2. The rule applicable to laches in equity applies for like reasons to the Orphans' Court in matters of account.

Appeal from the Orphans' Court of Baltimore County.

D. G. MCINTOSH and S. T. WALLACE for appellant.

ROBERT BALDWIN for appellee.

Sixteen years after the settlement of an account, it was attacked by the petitioners, the appellees, who sought to open the settled account and compel the executor to deliver certain bonds, notes, &c. The defence interposed by the appellant was, that the account and distribution of the ancestor's estate was thoroughly known to and acquiesced in by the parties seeking to impeach the same. The Orphans' Court passed an order granting the prayers of the petitioners, from which order the executor appealed.

Judge McSherry, in reversing the order of the Orphans' Court, said, in substance: It is clearly established by the evidence in the record, that these next of kin had full knowledge of the settlement and of the distribution made by the deceased; and it is not disputed, that his ownership of the personalty referred to was never questioned during the lifetime of the deceased, by any of his next of kin. After the death of said deceased and his sister, the claim now made by some of their descendants is for the first time presented.

A matter thus settled should not be disturbed. To tolerate it would be subversive of a most salutary as well as a fundamental principle and firmly settled policy of the law.

As has been said by the Supreme Court of the United States in Tunsdale v. Smith, 106 U. S. Rep., 394, "the peace of society and the security of property demand that the presumption of right arising from a great lapse of time, without the assertion of an adverse claim, should not be disturbed. In such cases sound discretion requires that the court should withhold relief."

A contrary doctrine would violate the best principles of public policy and jurisprudence. Hawkins v. Chapman, 36 Md. Rep., 83; see also Ridenour v. Keller, 2 Gill Rep., 145. There is no reason for the application of a different doctrine when the proceedings originate and are prosecuted in the Orphans' Court instead of in a court of equity. The same policy which dictates a denial in one tribunal, of relief to those who have slept for so long a period upon their rights, with equal force applies to like proceedings in the other.

The policy and reason of the law in this respect is the same in both jurisdictions.

Order reversed; petition dismissed.

THE COURTS.

Supreme Court of the United States.

January 19.

887. The U. S. v. The San Jacinto Tin Co. Reassigned for argument.

1335. Quades v. Simrall. Docketed and dismissed.

133. Porter v. Beard; 134. Beard v. Porter; 135. Worthington v. Abbott. Argued.

136. Cleveland v. Lockwood. Dismissed per stipulation.

Supreme Court of the District of Columbia.

GENERAL TERM.

January 19.

Knight, Anderson, et al. v. The B. & P. R. R. Argued and submitted.

IN EQUITY.—New Suits.

January 18.

10967. Mary Cunningham v. Mark L. Cunningham. To sell lot. Com. sol., M. J. Colbert.

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10968. Carrie C. Davis et al. v. Robert V. McHenry et al. Judgment creditor's bill. Com. sol., S. T. Thomas.

January 19.

10969. Francis C. Travers v. Wm. B. T. Davis et al. Judgment creditor's bill. Com. sol., H. W. Garnett.

10970. Abigail Conner v. Patrick Conner. For divorce. Com. sol., T. F. Miller.

10971. Patrick Corcoran v. Wash. Nailor. For injunction. Com. sol., R. R. Perry.

10972. John Hockemeyer v. Edmund P. Nalle. For specific performance and injunction. Com. sols., Newton & Lavender.

January 20.

10973. Charles T. Heinecke v. James W. Barker et al. Judgment creditor's bill, and to sell. Com. sol., B. F. Leighton.

10974. Thomas W. Smith v. Wm. Price et al. Judgment creditor's bill, and to sell. Com. sol., S. T. Thomas.

January 21.

10975. Anna M. Furmage v. Mary Furmage et al. To sell infant's interest in real estate. Com. sol., J. J. Darlington.

10976. Alfred Richards et al. v. Joseph Rose et al. To enforce mechanics' lien. Com. sol., A. B. Duvall.

CIRCUIT COURT.—New Suits at Law.

January 17.

28390. Geo. E. Kirk v. Richard H. Goldsborough. Acc't, $244. Plffs attys, H. O. & R. Claughton.

28391. Daniel O'C. Callaghan v. Wm. Courtney. Account, $192.50. Plffs atty, D. O'C. Callaghan.

January 18.

28392. Isaac A. Rosecrans et al. v. Louis G. Mackall. Appeal. Defts atty, D. S. Mackall.

28393. Field Bros v. Wm. Z. Partello. Acc't, $114.60. Plffs attys, Abert & Warner.

28394. Pierson & Co. v. Austin P. Brown. Note, $170. Plffs attys, Same.

28395. Lord & Taylor v. Earnest D. Mayer et al. Account, $1,044.97. Plffs attys, Same.

28396. Leon Rheimo v. Same. Acc't, $612.63. Plffs attys, Same.

28397. Samuel Raleigh v. The Potomac Steamboat Co. Damages, $10,000. Plffs attys, Forrest and Padgett.

28398. Duncanson Bros. v. Elizabeth A. Brown, trading under the name of Elizabeth Peterson. Acc't, $960.05. Plffs attys, Garnett and Mackall.

28399. David Neil et al. v. August Dittrich. Acc't, $517.35. Plffs atty, Mills Dean.

28400. M. H. Smith et al. v. Wm. B. T. Davis. Acc't, $130. Plffs attys, Garnett and Mackall.

28401. Samuel Bensinger v. Abram F. Barker. Note, $121.50. Plffs atty, Chas. Bendheim.

January 19.

28402. P. P. Toale v. Edw. Landvoight et al. Appeal. Defts atty, W. P. Williamson.

28403. Henry Cuppy v. Samuel S. Henkle, executor of F. P. Cuppy, deceased. Ohio judgment, $6,281.50. Plffs atty, E. Totten.

28404. Louis Taber v. Frank P. Dewees. Judgment of Justice Helmick, $94.45. Plffs atty, J. J. Wilmarth.

28405. Michael Talty v. James D. O'Donnell. Account rent, $400. Plffs attys, Morris & Hamilton.

January 20.

28406. Wm. Ritch et al. v. George W. Harris. Note, $555.83. Plffs attys, Beach & Page.

PROBATE COURT.—Justice Merrick.

January 20.

Estate James Brady. Exemplified copy of will filed.

Estate Obediah Kimmell. A. J. Colton appointed to take testimony.

Estate Annabel Hendershott. Will fully proven.

Estate Ella J. Griswold. Letters issued to John Ridout; bond, $8,000.

Estate Bernard Overman. Order of publication issued.

Estate W. L. Ross. Authority to sell granted.

Estate Francis Goode. Letters granted G. Brown Goode, on special bond.

Estate R. J. Blakelock. Letters granted Catherine Blakelock; bond, $2,000.

Estate Richard Byron. Order of publication.

W. J. McCarty appointed guardian to Donald McCarty et al.; bond, $3,000.

Rule of Court.

RULE 20 * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 25th day of January, 1888.

Caroline Green et al., Complainants,
v.
George W. Snow et al., Defendants. } Equity. No. 9,674.

On motion of the complainants, by C. G. Berryman, their solicitor, it is ordered that the defendants, Martha Carroll, Dennis Anderson, Rebecca Snow, John T. Snow, Daniel B. Snow and Virginia Snow, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a sale for the purpose of partition of the east half of lot numbered four (4) in square numbered five hundred and thirty-eight (538), in the city of Washington, D. C., as will more fully appear by the bill of complaint in this cause filed.

By the Court. W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
4 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Anna E. Sleator, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of January, 1888.
4 AUGUSTA C. G. S. HAYCOCK,
Adm'x c. t. a., 1832 19th st.
No. 2901. Ad. D. 13. Wm. G. Johnson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard James Blakelock, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all bene fit of the said estate.

Given under my hand this 20th day of January, 1888.
4 CATHARINE E. BLAKELOCK,
Adm'x c. t. a., 619 6th st. s. w.
No. 2962. Ad D. 13. Wm. Twombly, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wilhelmina Walter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.
3 WM. J. WALTER, Ex'r, 1113 5th st. n. w.
No. 2943. Ad. D. 13. FERDINAND SCHMIDT, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of January, 1888.

Annie L. Kerby
v.
Frank A. Kerby. } No. 10,808. Docket 27.

The Marshal having returned the defendant "Not to be found," on motion of the plaintiff, by Mr. Fred. W. Jones, her solicitor, it is ordered that the defendant, Frank A. Kerby, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is procure a divorce from the defendant upon the grounds stated in the bill, which are adultery and cruelty of treatment.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court business.
January 20th, 1888.

In the matter of the Estate of **Bernard Overman**, deceased.
Application for Letters of Administration on the estate of the said deceased, has this day been made by his widow, Elizabeth Overman.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of February, 1888, next, at 11 o'clock a. m., to show cause why said Letters should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, A. J.
4 Test: DORSEY CLAGETT, Register of Wills.
W. E. Edmonston, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
January 20th, 1888.

In the matter of the Estate of **Obediah Kimmell**, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph Gawler,

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of February, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
4 Test: DORSEY CLAGETT, Register of Wills.
No. 2942. Ad. D. 13. N. H. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
January 20th, 1888.

In the matter of the Estate of **Richard Byron**, late of the District of Columbia, deceased.
Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Eliza Byron.

All persons interested are hereby notified to appear in this Court on Friday the 10th day of February next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
4 Test: DORSEY CLAGETT, Register of Wills.
No. 2946. Ad. D. 13. S. C. Mills, Proctor.

THIS IS TO GIVE NOTICE,

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth D. Lowry**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate,

Given under our hands this 13th day of January, 1888.
4 WILLIAM L. DUNLOP, } Executors.
WILLIAM LAIRD, Jr. }
No. 2957. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Henry A. Merrick**, late of the District of Colmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.
4 ERNEST M. MERRICK, Adm'r c. t. a.,
416 Spruce st., Le Droit Park.
No. 2955. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 21st day of January, 1888.

Lewis Cook
v. } No. 10,303. Equity Docket 26.
Frank Waters et al.

On motion of the plaintiff, by Mr. H. B. Moulton, his solicitor, it is ordered that the defendants, **James Brooks** and **John Brooks** cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside two alleged deeds of trust as fraudulent, purporting to convey the land and premises known as the west half of lot numbered 89, in Hopkins' recorded subdivision of square 110, in the city of Washington, D. C. And also, for the appointment of a trustee to sell and convey the said property, and for a distribution of the proceeds thereof among the heirs-at-law of James Washington, deceased.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
4 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,
January 20th, 1888.

In the case of **Eliza Ann Brooks**, Administratrix of **Joseph Brooks**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 24th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

4 Test. DORSEY CLAGETT, Register of Wills.
No. 2556. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of January, 1888.
3 JAMES WILKINSON, Ex'r, 1435 Q st. n. w.
No. 2920. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 9th day of January, 1888.

D. Appleton & Co.
v. } No. 28,301. At Law.
Eufemio Abadiano.

On motion of the plaintiffs, by Mr. Maddox, their attorney, it is ordered that the defendant, **Eufemio Abadiano**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the goods and chattels of defendant, attached by the Marshal in the hands of S. P. Langley, Secretary of the Smithsonian Institution, December 10, 1887, to the satisfaction of a claim of the plaintiff's for $1,217.90, with interest and costs, as claimed in the above-entitled cause.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
3 By J. R. YOUNG, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rosina M. Kleiber**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1888.
4 M. D. PECK, Ex'r, 934 F st. n. w.
No. 2931. Ad. D. 13.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John M. Barclay**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.

3 JAMES R. YOUNG, Ex'r, 1506 Q st. n w.

E. B. Hay, Pooctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles S. Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of January, 1888.

3 HAMILTON E. LEACH, Adm'r, 400 7th st. s. w.

No. 2956. Ad. D. 13. C. M. SMITH, T. M. FIELDS, Proctors

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Moses Walsky**, late of Chicago, Ill., deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1888.

3 SIMON WOLF, Adm'r, 921 F st. n. w.

No. 2958. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary A. Roth**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of January, 1888.

2 JAMES M. JOHNSTON, Ex'r,

No. 2947. Ad. D. 13. Fendall Law Building.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ambrose W. Thompson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.

3 CELESTE THOMPSON, Ex'x, 1720 H st. n. w.

No. 2964. Ad. D. 13. M. F. MORRIS, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration d. b. n. c. t. a. on the personal estate of **Ann C. Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July, 1888, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of January, 1888.

3 GEORGE F. APPLEBY, Adm'r d. b. n. c. t. a. of the estate of Ann C. Carroll, dec'd.

No. 1086. Ad. D. 10.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary P. Smith et al. v. **Edward Hesslegrave et al.** } 10,739. Eq. Doc. 27.

Ordered, this 3d day of January, A. D. 1888, that the sale made and reported by R. P. Jackson, trustee in the above cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 6th day of February next.

Provided a copy of this order be inserted in the Law Reporter once a week for three weeks before the said day.

The report states the amount of sales to be 4,675 dollars.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

1 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 6th, 1888.

In the case of Maria L. Harkness, Executrix of **John C. Harkness**, dec'd, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

2 Test: DORSEY CLAGETT, Registor of Wills.

No. 2419. Ad. D. 12. I. L. JOHNSON, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Osceola C. Green v. **Andre De Loffre and Samuel De Loffre.** } No. 10,926. Equity Docket 27.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendants, **Andre De Loffre** and **Ssmuel De Loffre**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for partition of south half of lot numbered eight (8), in square numbered one (1), in the city of Washington, District of Columbia.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

The 6th day of January, 1888.

Joseph E. Johnston v. **Henry B. McLane & als.** } No. 10,923. Equity Docket 27.

On motion of the plaintiff, by Messrs. Gordon & Gordon, his solicitors, it is ordered that the defendants, **Henry B. McLane, Robert Hocmelle** and **Helene Hocmelle**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for partition of lot numbered thirty-three (33), in Shepherd and Kirby's recorded subdivision of square numbered one hundred and sixty-four (164), as recorded in Surveyor's Liber J. H. K., page 137, (said lot being in the city of Washington, in the District of Columbia).

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk. &c.

2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of January, 1888.

Annie L. Kerby v. **Frank A. Kerby.** } No. 10,808. Docket 27.

The Marshal having returned the defendant "Not to be found," on motion of the plaintiff, by Mr. Fred. W. Jones, her solicitors, it is ordered that the defendant, **Frank A. Kerby**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is procure a divorce from the defendant upon the grounds stated in the bill, which are adultery and cruelty of treatment.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

2 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 6th, 1888.

In the case of Edgar P. Berry, Administrator of Maria Berry, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

2 Test: DORSEY CLAGETT, Register of Wills.

No. 2550. Ad. D. 13. Chas. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 5th, 1888.

In the case of George T. Dunlop, Executor of Edwin D. Hartley, dec'd, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 27th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

2 Test: DORSEY CLAGETT, Register of Wills.

No. 2565. Ad. D. 13. C. M. & H. S. MATTHEWS, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of January, 1888.

Clara B. Harrison v. William H. Harrison. } No. 10,886. Docket 27.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce on the ground of desertion.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Ida L. Neagle v. John L. Neagle. } No. 10,906. Equity Docket 27.

On motion of the plaintiff, by Mr. Rogers, her solicitor, it is ordered that the defendant cause his appearance to be entered herein or on before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published for three weeks in the Washington Law Reporter.

The object of this suit is to procure an absolute divorce on the ground of cruelty.

By the Court: WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis P. Shoemaker v. Francis D. Shoemaker et al. } No. 10,821. In Equity.

Upon consideration of the report of William G. Johnson, trustee, this day filed, it is by the Court, this 9th day of January, 1888, ordered that the sale of part of lots numbered fourteen (14) and sixteen (16), in square numbered five hundred and one (501), to Andrew J. Sanford, for eighteen hundred dollars ($1,800), as reported by the said trustee, be and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before February 10th, 1888.

Provided that a copy of this order be published for three successive weeks in the Washington Law Reporter before said day.

WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of January, 1888.

George Menke v. Edward Wilde et al. } Eq. No. 10,905. Docket No. 27.

On motion of the plaintiff, by Mr. Thomas B. Higgins, his solicitor, it is ordered that the defendants, Edward Wilde, Elizabeth Wilde, his wife, Edward Hesselgrave, Emma Eliza Hesselgrave, his wife, George Thomas Hesselgrave, Elizabeth Hesselgrave, his wife, Haywood Hesselgrave, Eliza Hesselgrave, his wife, Mary Jane Owen, William Owen, her husband, and Eliza Ann Hesselgrave, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud off title to lot five (5), in square four hundred and eighty-four (484).

By the Court. WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

John W. Collins v. Wm L. Lyon and Chas. A. Conklin, trading under the firm name and style of Lyon, Conklin & Co. } No. 10,096. Equity Docket 26.

On motion of the plaintiff, by Messrs. Meloy & Steuart, his solicitors, it is ordered that the defendant, William L. Lyon, of the firm of Lyon, Conklin & Co., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree declaring the forfeiture of the assignment by the plaintiff to Lyon, Conklin & Co., of an interest in the letters patent of the United States, Nos. 8,570 and 205,786, and to decree a retransfer of such interest.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Sarah M. Starr v. William W. Metcalf et al. } No. 10,858. Docket 27.

On motion of the plaintiff, by Mr. Samuel Maddox, her solicitor, it is ordered that the defendants, John H. Cooper and Mary Cooper, his wife, Isaac Cooper and William Smith, infant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is the appointment of a trustee in the place and stead of said William W. Metcalf, to execute the powers created by a certain deed of trust made and executed on the 27th day of January, A. D. 1877, by one Lysander Cooper, late of said District, deceased, and defendant, Louisa Cooper, his wife, as the same is recorded among the land records of said District, in Liber No. 840, at folio 355 et seq.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of January, 1888.

Allen C. Clark v. Robert C. Walsh et. al. } In Equity. No. 10,908. Docket 27.

On motion of the plaintiff, by Mr. Daniel O'C. Callaghan, his solicitor, it is ordered that the defendants, Robert Correa Walsh, Virginia Walsh, his wife, Anna Wood Walsh, George Washington Walsh, and George Washington Walsh, Trustee, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to clear of cloud title to original lots twenty, twenty-one, twenty-two and twenty-three, in square five hundred and fifty-one, in Washington, D. C., and for their partition.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
2 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of January, A. D. 1888.

Henry Wise Garnett, Trustee, Plff.
v.
Martin Coryell et al., Defts. } Eq. No. 10,137.

On motion of the complainant, by Conway Robinson, jr., and D. S. Mackall, his solicitors, it is, this 5th day of January, A. D. 1888, by the Court, ordered that the defendants, Alice C. Erismann, Emma L. C. Ayers and Torbert Coryell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a conveyance from the defendants to this cause, as the sole heirs-at-law of Lewis S. Coryell, deceased, of the property devised to George W. Riggs, trustee, as to which the complainant has been substituted in place of said Riggs as trustee.

By the Court. WM. M. MERRICK, A. J.
True copy. Test. R. J. MEIGS, Clerk, &c.
8 By H. W HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Matthew G. Emery, Jr., late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.
3 HELEN L. EMERY, Ex'x, 411 Fourth st. n. w.
No. 2939. Ad. D. 13. W. K. DUHAMEL, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Wilhelmina Walter, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.
3 WM. G. WALTER, Ex'r, 1113 5th st. n. w.
No. 2943. Ad. D. 13. FERDINAND SCHMIDT, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Michael McAllister, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of January next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 11th day of January, 1888.
her
3 MARGARET ⋈ McALLISTER, Ex'x.
mark.
No. 2948. Ad. D. 13. D. O'C. CALLAGHAN, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

January 13th, 1888.

In the matter of the Estate of Agnes Maria Smith, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, having been made by Blair Lee, of Montgomery Co., Md.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of February, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Evening Star previous to the said day.

By the Court. WM. M. MERRICK, Justice.
3 Test: DORSEY CLAGETT, Register of Wills.
No. 2985. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

Edward Mitchell
v.
Chloe Ann Mitchell et al. } No. 10,737. Equity Docket 27.

On motion of the complainant, by Messrs. Campbell Carrington and J. G. Bigelow, his solicitors, it is ordered that the defendants, Martha Jane Sands, Josephine Fillmore, and Mary Douglas, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside the deed of conveyance dated May 7, 1885, of sublot 74, in square 510, situate in the city of Washington, D. C., to defendants, Lucy, Jane, Mary and Josephine Mitchell, and to sell the same, and to distribute the proceeds between the complainant and the infant defendants, Alice, Henrietta and Daniel Mitchell.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William E. Howard, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.
2 H. E. HOWARD, Ex'x, 1828 H st. n. w.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Emory, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.
2 MATILDA W. EMORY, Ex'x, 1718 H st.
No. 2940. Ad. D. 13. Woodbury Blair, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of January, 1888.

Jennie A. Smith
v.
Edward A. Smith. } Equity. No. 10,824.

And now, to-wit, January 13th, 1888, on motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

And that notice hereof be published once a week for three successive weeks in the Washington Law Reporter and the National Republican.

The object of this suit is to obtain a divorce on the ground of non-support and desertion.

By the Court. WM. M. MERRICK, A. J.
True copy. Test: R. J. MEIGS, Clerk, &c.
3 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 13th, 1888.

In the case of George A. Smith, Administrator of David Smith, deceased, the Administrator aforesaid has with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

3 Test: DORSEY CLAGETT, Register of Wills.
No. 2584. Ad. D. 13. WM. TWOMBLEY, Proctor.

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Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

Hannon's Digest, vols. 1 and 2.
Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
Lovelass on Wills.

Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
Powell on Devises.
Preston on Abstracts of Title, 2 vols. in one.

Railway Law (Bonner), 1878.
Ray's Medical Jurisprudence of Insanity, 1853.
Roberts on Wills, vols. 1, 2.
Roper on Wills.

Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
Smith's Probate Law, 1868.
Smith's Elements of the Law.
Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
Willis on Trusts.
Williams on Executors, &c., vol. 2, Thobault's Notes.

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WM. STONE ABERT, - - - - - Editor

VOL. XVI. - - - - - - - - No. 5

WASHINGTON, D. C. - - - - FEBRUARY 1, 1888

A CONGRESS OF LAWYERS.

PROPOSED NATIONAL CONVENTION OF MEMBERS OF THE BAR.

The Board of Directors of the Bar Association of the District have issued a circular to the bar associations of the country suggesting Tuesday, May 22, and this city, for the holding of a national convention of lawyers in this city. The initiative was taken May 10 last under the following resolution:

"*Resolved*, That the Board of Directors of this association are hereby requested to communicate with the local bar associations throughout the country and also with the American Bar Association, with a view of forming a national legal body to be composed of delegates from the various associations, and to meet in annual convention, such body to have for its object the advancement of the science of law in this country."

In the letter transmitting this, the board "calls attention to the salutary effect upon general legislation throughout the United States which would inevitably result from the free interchange of sentiment and the public expression of views by leading members of the bar. The evils resulting from the variant nature of this legislation, as it respects the administration of justice, and in its relation to such topics of universal interest as the execution of wills, limitation upon the powers of non-resident executors and administrators, formalities of conveyancing, marriage and divorce, etc., exhibit in a marked degree the propriety of securing a more homogeneous system of laws throughout the country."

The letter calling the committee is signed by James G. Payne (president), Andrew C. Bradley, George E. Hamilton, J. Holdsworth Gordon, James M. Johnston, Edward A. Newman (secretary), Tallmadge A. Lambert, Board of Directors. It says:

"Referring to their former circular letter on the subject of a proposed national convention at this place of the several bar associations throughout the country, and the consequent formation of a permanent representative body, the undersigned beg leave to state that, in view of the uniformly favorable responses which their letter has elicited, they are now encouraged to suggest Tuesday, the 22d day of May next, as the time and this city as the place for holding such convention, and that your society will proceed at its convenience to select delegates to attend and represent the views and interests of its members thereat."

The LAW REPORTER takes the liberty of urging upon the members of our Bar Association, the necessity of obtaining suitable Congressional appropriation, in order that the success of the undertaking may be assured. It will be remembered that the Congress of the United States provided ample means for defraying the expenses of the International Medical Congress, held in this city during the past summer.

As there are so many members of the legal profession in the two Houses of Congress, they should be appealed to, and their influence solicited in behalf of the lawyers' congress.

They would no doubt be as willing now to assist the lawyers, in the manner suggested, as they were willing last session to make munificent provision for the necessary expenses of the International Convention of members of the medical profession.

It would be well to request the several Bar Associations throughout the States, to urge upon their Senators and Representatives in Congress, the propriety of making the requisite appropriation.

We sincerely hope that the movement will prove successful; and that the convention will meet at the appointed time. It can reasonably be predicted, that with proper support and the hearty co-operation of the Bar Associations throughout the country, the National Convention of Lawyers will be productive of great results in the more uniform administration of law in the United States.

SUPREME COURT OF THE UNITED STATES.

LACHES IN EQUITY.

ALFRED RICHARDS, Appellant,
v.
BROOK MACKALL, Jr.
Decided January 9, 1888.

Appeal from the Supreme Court of the District of Columbia.

1. The chancellor may justly refuse relief where a complainant on his own showing has been guilty of laches, without enquiring whether there is a demurrer or a formal plea of the statute of limitations.

2. In such case equity will sometimes refuse relief where a shorter time than the statutory period has elapsed without suit.

3. A court of equity will not aid a party seeking to set aside an execution sale of real estate, because of mistake of the officer in not describing it with certainty in the advertisement of sale; especially where the complainant, with full knowledge of his rights for nearly twelve years, has failed to assert

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them, during which period the property has largely increased in value.

Mr. ENOCH TOTTEN, for appellant.

Mr. W. WILLOUGHBY, for appellee.

Mr. Justice HARLAN delivered the opinion of the court.

This case is the one referred to in the last clause of the opinion of this court in Mackall v. Richards, 112 U. S., 369, 376.

In the year 1859, Brooke Mackall, sen., made a verbal gift to his son, Brooke Mackall, jr., of lot 7, in square 223, in the city of Washington; the father, at the time, promising that he would thereafter make a formal conveyance of the property. The son, relying upon such promise, took possession of the lot and commenced the erection of a building thereon, at the southwest corner of New York avenue and 14th street. The lot was of irregular shape; its line on 14th street being about 152 feet long, and on New York avenue about 160 feet.

The marshal of the District of Columbia advertised, in 1869, that in virtue of three writs of *fieri facias* and one writ of *venditioni exponas*, issued from the clerk's office of the Supreme Court of the District, he would, on a named day, sell at public sale, for cash, "all defendant's right, title, claim, and interest in and to part of lot 7, in square 223, in the city of Washington, D. C., beginning at the northeast corner of said square and running thence south 44 feet; thence west to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning, together with all and singular the improvements thereon, seized and levied upon as the property of Brooke Mackall, jr., and will be sold to satisfy executions Nos. 3477, 3478, 4117, and 3708, in favor of Matthew G. Emery, George H. Plant, A. & T. F. Richards, and Owen & Wilson."

Before the sale took place, Mackall, jr., brought a suit in equity against said execution creditors and the marshal. He stated in his bill that, although he was equitably entitled to the whole of lot 7, under the beforementioned gift of his father, he had not received a conveyance therefor, and consequently did not hold the legal title. Referring to the description of the property as given in the levies and in the advertisement of sale, he alleged that it was both an indefinite and an impossible description, and that a sale in the mode proposed would prejudice his rights in the remainder of the lot. He therefore prayed that the sale be enjoined. The execution creditors severally answered, each averring that the legal title to the property was in Mackall, jr., in virtue of a sale, in 1862, to one Hyde for taxes assessed upon it by the corporation of Washington, and that Mackall, jr., as assignee of the purchaser, had received and then held a tax deed for the lot, dated October 6, 1865.

It does not appear from the record that any motion for an injunction was made, or that an injunction was issued, or that any further steps were taken, in that cause, beyond the filing of the bill and answer. The sale under the beforementioned executions, levies, and advertisement, occurred June 13, 1870. The present appellant became the purchaser at the sum of $2,500, all of which, except $646.89, was required to pay judgments prior in time to that recovered by A. & T. F. Richards. On the 7th of October, 1870, he received a deed containing the following description of the property conveyed: "Part of lot 7, in square 223, beginning at the northeast corner of square and running thence south 44 feet; thence westerly to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the beginning." This deed was duly recorded February 3, 1871. Richards took possession under his purchase, and expended large sums upon the property in order to make it available.

On the 2d of April, 1873, Brooke Mackall, sen. (his wife uniting and relinquishing her contingent right of dower), made a conveyance of lot 7, in square 223, to Joseph B. Hill in trust, to permit the grantor to hold, occupy, and enjoy the premises, with the rents, issues, and profits thereof, and to convey them to such persons, and upon such terms, as the grantor might in writing direct, and with authority in the latter to encumber the premises or any part thereof as he or his heirs and assigns might direct. This deed was recorded September 29, 1873. When it was made Mackall, sen., knew that his son held the tax deed of 1865; indeed, the tax deed was made to the son by the direction or procurement of the father.

On the 30th of January, 1874, by a deed, in which Brooke Mackall, sen., and Joseph B. Hill, individually and as trustee, united as grantors, lot 7, with all the buildings and improvements thereon, and all the rights appertaining thereto, was conveyed to Leonard Mackall, in trust, to hold the same for the use and benefit of Brooke Mackall, sen., "and subject to his absolute control and disposal, and to sell and dispose of the same as the said Brooke Mackall, sen., may in writing direct and require." This deed, for some reason, was not recorded until June 3, 1878.

By deed of February 27, 1880, Brooke Mackall, sen., conveyed the same lot, including his interest in a pending claim for mesne profits against Alfred Richards, together with all the buildings and improvements thereon, and with all rights in law or in equity appertaining thereto, to Brooke Mackall, jr., his heirs and assigns forever, for their sole use and benefit.

Mackall, sen., died March 7, 1880.

The present suit was brought by Brooke Mackall, jr., on the 11th day of April, 1882—nearly twelve years after Richards' purchase—for the purpose of having the sale of June 13, 1870, the conveyance of October 7, 1870, and all transfers depending thereon, adjudged to be void and of no effect. The sale and conveyance are attacked as invalid upon the following grounds: The price paid for it was grossly inadequate; the executions on which the sale was made were issued without authority, other previous executions not having been returned; the judgments on which the executions were issued were personal judgments only, while the executions directed the sale of specific property described therein; the executions did not sufficiently describe the nature of the debtor's interest in the property, whether legal, equitable

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or otherwise, nor define its boundaries, so that it could be identified, nor conform to the description of the property as given in the declarations; the court in two of the cases was without jurisdiction to render any other than personal judgments, the proper tribunal for the enforcement of mechanics' liens being a court of equity; that Brooke Mackall, sen., held the legal title to the property, and was not a party to any of the said suits; that a sale of an equitable interest in real estate could not be made at law, whether for the enforcement of a mechanic's lien or otherwise; that at the time of the sale, Mackall, jr., had no interest in the property except that arising from a verbal promise to convey and his action thereon; that the alleged levies and sale were made long after the return day of the writs; that the executions were issued and delivered to D. S. Gooding, who was then the marshal of the District of Columbia, whereas the advertisement, sale and conveyance purport to have been made by Alexander Sharp, who was marshal at the time of sale; that the advertisement of sale does not sufficiently describe the property, nor the nature of the interest to be sold, or agree with the other proceedings; and that the conveyance by the marshal does not conform to any of the proceedings in said causes.

The court below, in special term, dismissed the bill. But that decree was reversed in general term, the sale and conveyance by the marshal to Richards, and all transfers depending thereon, being set aside as void and of no effect. As between the parties to the suit, the appellee was declared to be the owner of the property, with a right to have the legal title conveyed to him, upon his paying appellant's claim as judgment creditor, as well as his disbursements in connection with said premises. The ground upon which the court below, in general term, proceeded was, that "on account of the patent, and palpable ambiguity and uncertainty in the description of the property, both in the advertisement and in the marshal's deed," the sale could not be sustained. Mackall v. Richards, 3 Mackey, 271.

1. Is appellee entitled to relief in a court of equity in respect to the sale of June 13, 1870? In Badger v. Badger, 2 Wall., 95, it was said that a party who makes an appeal to the conscience of the chancellor should "set forth in his bill specifically what were the impediments to an earlier prosecution of his claim; how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance; and how and when he first came to a knowledge of the matters alleged in his bill; otherwise, the chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or a formal plea of the statute of limitations in his answer." So in Sullivan v. Portland, etc., R. R. Co., 94 U. S., 811: "To let in the defence that the claim is stale, and that the bill cannot, therefore, be supported, it is not necessary that a foundation be laid by any averment in the answer of defendants. If the case, as it appears at the hearing, is liable to the objection by reason of the laches of the complainants, the court will, upon that ground, be passive and refuse relief." In the latter case, it was said that equity would sometimes refuse relief where a shorter time than that prescribed by the statute had elapsed without suit. See also Hume v. Beal, 17 Wall., 336; Marsh v. Whitman, 21 *Id.*, 184-5; Hayward v. National Bank, 96 U. S., 617; Speidel v. Henrici, 120 U. S., 387.

These principles, applied to the present case, lead to a reversal, upon the ground that the appellee, upon his own showing, has been guilty of gross laches in applying for relief. When the sale to Richards was made the appellee had in his possession a tax deed to himself conveying the legal title to the whole of lot 7. While he says he was advised by counsel that that deed was of no value, and for that reason he did not put it upon record, he fails to suggest in his pleadings any reason why it was not sufficient to invest him with the legal title to the premises. The evidence fairly justifies the conclusion that he was induced, by reason of his embarrassed financial condition, to keep it from record in order thereby to confuse the title to the property, and increase the difficulties in the way of creditors reaching it for his debts. Be that as it may, and assuming that the tax deed was invalid, the appellee having gone into possession of lot 7, and improved it, with the consent of his father, and under the latter's promise to convey it to him, he was entitled, at any time after the sale to Richards, to raise the identical questions now presented, as to the invalidity of the sale and conveyance. He made, as we have seen, an effort, before the sale, to have it stopped; but he did not prosecute the suit brought for that purpose; and after the sale, so far as the record shows, he took no legal steps whatever to prevent a conveyance being made to the purchaser or to have the sale set aside. It is true he alleges that he complained to Richards of the injustice done by the sale, and endeavored to procure a compromise with him; that the latter repeatedly promised to do what was right, and to release his claim on the property when he was reimbursed by rents and profits for the money he had expended; that Richards promised to render an account of his claim, but no account was ever rendered, except one so extravagant that it could not be considered; and that he has never been able to effect any arrangement with him. The evidence does not sustain these allegations. Appellee testifies that in August, 1873, his father tendered to Richards the amount of his judgment, together with all the expenses and costs of all kinds. But he admits that the appellant declined to accept the money. While appellant was, perhaps, willing to surrender his purchase, shortly after it was made, if he had been reimbursed his expenditures in connection with the property, there is no satisfactory proof that he ever recognized the legal or equitable right of the appellee, or of any one else, to deprive him of the full benefit of that purchase. We find nothing whatever in the record to excuse the failure of the appellee to institute legal proceedings, in due time, to have the sale set aside. He knew that the appellant relied upon the sale, and upon the faith of it expended large sums. He knew that the premises here in dispute were in fact levied on for his debts, and were intended to be sold in satisfaction of those debts. But after the property has largely increased in

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value, and after sleeping upon his rights for nearly twelve years, with information, during the whole of that period, of every fact now relied upon by him, appellee asks the aid of a court of equity to set aside the sale and conveyance, and adjudge him to be the owner of the property; and, chiefly, because of a mistake of the officer in not so describing the premises in the advertisement of sale and in the conveyance, as to properly identify them. In our judgment, he is not in a position to claim the interference of a court of equity. For that reason alone, the judgment must be reversed and the cause remanded, with direction to dismiss the bill.

LONGEVITY PAY—PAYMASTER'S CLERK.

THE UNITED STATES, Appellant,
v.
GEORGE E. HENDEE.

Decided January 23, 1888.

1. In estimating the compensation of a paymaster in the navy, his time of service while a paymaster's clerk is to be computed, under the provisions of the Act of Congress passed March 3, 1883.

2. The petitioner while a clerk of a paymaster in the navy, was an officer of the navy within the meaning of the statute, which provides for increase of pay to officers of the navy according to length of service.

Appeal from the Court of Claims.

A. H. GARLAND, Attorney-General, for appellant.

ROBERT B. LINES and JOHN PAUL JONES, for appellees.

Mr. Justice MILLER delivered the opinion of the court.

George E. Hendee brought suit in the Court of Claims for compensation as a paymaster in the Navy beyond what he had been allowed and paid for his services. He recovered a judgment in that court for the sum of $8,178.01, of which $6,313.77 was not disputed. The disposition of the remainder of $1,864.24, depends upon whether the period of time from October 10, 1861, to November 30, 1862, during which he served as a paymaster's clerk, should be counted for the purpose of increasing his salary under the longevity provisions of the statutes.

This amount the accounting officer refused to allow, upon the ground that a paymaster's clerk is neither an officer nor an enlisted man in the Navy, and as a consequence the time of an officer who has been such a clerk is not entitled to be computed under the provisions of the Act of March 3, 1883, on that subject. That statute provides as follows:

"And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service." 22 U. S. Stats. at Large, 473.

In the opinion of the Chief Justice, rendered in the Court of Claims (22 Ct. Cls. R., 134), the single issue raised is the question of law, whether or not a paymaster's clerk is an officer of the Navy within the meaning of said act.

We have just decided, in the case of United States v. Mouat, that a paymaster's clerk is not, in the constitutional sense of the word, an officer of the United States; but we added also that Congress may have used the word "officer" in a less strict sense in some other connections, and in the passage of certain statutes might have intended a more popular signification to be given to that term. And in regard to the Act of 1883, we think that its proper construction requires that the officer, when subsequently coming to compute what increase shall be made to his statutory salary by reason of his previous service, has a right to count other service than that rendered in the character of an officer, as defined by the Constitution of the United States. Its language is, that "all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men."

The claimant here is an officer of the Navy, and is, therefore, to be credited with the actual time that he served as an officer or enlisted man in the regular or volunteer Army or Navy, or both. We think the words "officers or enlisted men in the regular or volunteer Army or Navy, or both," was intended to include all men regularly in service in the Army or Navy, and that the expression "officers or enlisted men" is not to be construed distributively as requiring that a person should be an enlisted man, or an officer nominated and appointed by the President, or by the head of a Department, but that it was meant to include all men in service, either by enlistment or regular appointment in the Army or Navy. We are of opinion that the word "officer" is used in that statute in the more general sense which would include a paymaster's clerk: that this was the intention of Congress in its enactment, and that the collocation of the words means this, especially when it is added that they "shall receive all the benefits of such actual service in all respects and in the same manner as if said service had been continuous and in the regular Navy."

In *ex parte* Reed, 100 U. S., 13, the court said; "The place of paymaster's clerk is an important one in the machinery of the Navy. Their appointment must be approved of by the commander of the ship. Their acceptance and agreement to submit to the laws and regulations for the government and discipline of the Navy must be in writing, and filed in the Department. They must take an oath, and bind themselves to serve until discharged. The discharge must be by the appointing power, and approved in the same manner as the appointment. They are required to wear the uniform of the service; they have a fixed rank; they are upon the pay roll, and are paid accordingly. They may also become entitled to a pension and to bounty land. . . . If these officers are not in the naval service, it may well be asked who are."

In the case of Bogart, who was brought before Judge Sawyer of the Circuit Court on a writ of *habeas corpus*, that judge took the same liberal view in regard to the position of a paymaster's clerk in the Navy; holding that as an officer of the Navy he was subject to be tried by a court

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martial, and accordingly remanded him to the custody of that court for trial. In the opinion he says: "Was the petitioner, while a clerk of a paymaster in the Navy, on duty in the manner before stated, a person in the naval service of the United States within the meaning of this act? It is contended on his bhealf that he was not. But upon this point we entertain no doubt. He was not merely an employe or servant of the paymaster, but on the contrary, as we have seen from the regulations of the Navy, set out in the statement of facts, he was an officer of the Navy." 2 Sawyer C. C. Rep., 396.

In the opinion of Chief Justice Richardson, delivered in the Court of Claims (22 Ct. Cls. R., 134) in the case now under review, the same view was ably argued, and while we do not concede that a paymaster's clerk is, for all purposes and in the general sense of that term, an officer of the Navy, we believe that within the meaning of the statute now under consideration, providing for increase of pay to officers of the Navy according to length of service, that it was the purpose of the framers of that act to include service rendered as a paymaster's clerk in the Navy.

The judgment of the Court of Claims is therefore affirmed.

UNITED STATES COURT OF CLAIMS.

GEORGE W. WILLIAMS v. THE U. S.

A claimant is not entitled to recover the salary of minister resident and consul-general of United States to Hayti, until he has executed the official bond required by law.

GEORGE A. KING for claimant.

H. J. MAY, Assistant Attorney-General, for the U. S.

RICHARDSON, Ch. J., delivered the opinion of the court.

The claimant brings this action to recover the salary of minister resident and consul-general of the United States to Hayti while, as he alleges, he held that office. The defendants deny that he ever was the incumbent of the office so as to be entitled to the emoluments thereof.

The facts are that on the 2d day of March, 1885, the claimant was nominated by the President to that office, and the Senate gave its advice and consent thereto on the same day.

On the next day the President signed his commission, and it was thereupon given to him by the President's private secretary to be taken to the Secretary of State. The Secretary being absent from the Department, the claimant found his private secretary, and went with him to the residence of the Secretary, where the commission was countersigned by the latter officer. The private secretary then took charge of the commission, had it with him at the Department the following day, March 4, when the seal was affixed and the claimant took the oath of office, the commission being retained to await compliance on the part of the claimant with the following provision of Revised Statutes, section 1697:

"Every consul-general, consul, and commercial agent, before he receives his commission or enters upon the duties of his office, shall give a bond to the United States, with such sureties, who shall be permanent residents of the United States, as the Secretary of State shall approve."

. . .

The claimant never gave a bond, and so did not receive his commission nor enter upon the duties of his office. On his part reliance is placed on the decision of the Supreme Court in Marbury v. Madison (1 Cranch, 137). In that case the question was whether the plaintiff was *entitled* to the office and commission, and not whether he was *actually in office* and entitled to its emoluments. The court held that when he had been nominated and the Senate had consented to the appointment, and his commission had been signed by the President and sent to the Secretary of State, his appointment was complete so far as the Executive was concerned, and that he was entitled to the office with or without a commission. But it did not go so far as to hold that such an appointee is actually invested with the office before he performs the conditions precedent which are by law required of him. He must take the oath of office, which may be done after the commission is delivered, and, as to the office now under consideration, the appointee must give a bond before he can receive his commission or enter upon the duties of his office.

Until the bond is given or tendered, it cannot be known that the appointee ever will accept the office, and the office cannot be forced upon him without his consent.

The question does not arise here whether such an officer under some circumstances, and to some extent, might not be held to have been in office and entitled to its salary from the date of his commission, or from the date of his taking the oath, if within a reasonable or proper time his bond should be tendered, because the claimant never tendered a bond at any time.

The Executive was not bound to give the claimant his instructions nor order him to his post of duty until the latter had fully manifested his acceptance of the office and his ability to comply with the condition precedent to the right by the giving of a bond with sureties.

The fact that the claimant defaced the blank bond first given to him, and more than fifty days thereafter wrote to the Secretary of State asking for another blank, and saying that he was "anxious to comply with the letter as well as the spirit of the law," is wholly immaterial. Excuses for non-compliance with the law, however reasonable, could not relieve him from the obligations imposed by its requirements.

After waiting more than forty days the Secretary of State asked the advice of the Attorney-General as to the claimant's right to the salary of the office and received the following opinion:

DEPARTMENT OF JUSTICE,
Washington, April 22, 1885.

SIR: Your communication of the 20th April instant asks my opinion upon this case: Mr. George W. Williams was appointed by President Arthur minister resident and consul-general to Hayti, with the advice and consent of the Senate.

On the 4th of March, 1885, Mr. Williams took the oath of office at the Department of State, and was there furnished with a blank form of the official bond which consuls-general are required by law to execute.

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Mr. Williams has not executed any bond, and the President has determined not to deliver his commission to him.

The question submitted is, whether Mr. Williams is entitled to any pay.

I am of opinion that he is not entitled to pay as an incumbent of the office mentioned.

The commission of Mr. Williams has been held by the Secretary of State in escrow, and its delivery depended upon the condition prescribed by section 1697 of the Revised Statutes, which provides that "every consul-general, consul, and commercial agent, *before he receives his commission or enters upon the duties of his office, shall give a bond to the United States with sureties.*" . . .

It will be observed that Congress manifests a plain intention that no right of any kind shall accrue from appointment to the offices named until the bond shall have been given, so that if Mr. Williams had been permitted to enter upon the duties of the office in question, he could not have received compensation for his services. This exceptional stringency was no doubt employed for the better protection of the public interests in foreign countries.

As Mr. Williams has not given the required bond, it follows that he has never become entitled even to demand his commission, let alone to enter upon the duties of the office; from which it follows, necessarily, that he cannot claim any of its emoluments.

I have the honor to be, sir, your obedient servant,

A. H. GARLAND,
Attorney-General.

THE SECRETARY OF STATE.

On the 7th of May, 1885, the office was filled by the appointment of another person, not in place of the claimant, but in place of John M. Langston, the former incumbent.

In our opinion the claimant was never fully invested with the office of minister resident and consul-general to Hayti. To use a familiar expression, he failed to "qualify" for the office (Abbott's Law Dictionary, vol. 2, "Qualify"), and is therefore not entitled to the salary.

The petition must be dismissed.

UNITED STATES CIRCUIT COURT N. Y.

DRAMATIC PROPERTY.

THOMAS K. SERRANO ET AL.
v.
CHARLES R. JEFFERSON ET AL.

Decided January 3, 1888.

1. The mechanical contrivance by which a river and waterfall of natural water is set upon the stage as part of a copyrighted play, is not protected by the copyright of the play in which such "scenic effect" is introduced.

2. An injunction will not be granted at the suit of the owner of such play, to restrain another theatrical manager from the use of such mechanical contrivance, although the "immersion scenes" in the two plays are the prominent and attractive features.

PATRICK E. CALLAHAN, for complainant.

A. J. DITTENHŒFER, for defendant.

LACOMBE, J.—The plaintiffs have elaborated Mr. Vincent Crummles' dramatic conception of a real pump and wash-tubs. In the fourth act of their play entitled "Donna Bianca, or Brought to Light," they set in the stage a real tank, three feet square and seven feet deep, filled with natural water. This water flows through a trough from behind a battlement wall at the rear of the stage, falling into the tank and running off underneath the stage. The water in this tank and trough represents a river. It is crossed by a bridge, upon which, after an angry dialogue between the hero and the villain of the play, there ensues a struggle in which the villain falls through the bridge into the water below. Plaintiffs allege that their play is copyrighted, and by virtue of that circumstance pray for an injunction against the defendants. These latter are now managing and producing, at the Academy of Music in this city, a play entitled "A Dark Secret." Here, too, there is placed upon or set into the stage a tank considerably larger than the plaintiffs' tank and trough, also filled with natural water and intended to represent the river Thames. Into this tank the heroine of the play is thrown after an appropriate dialogue. It is alleged that these immersion scenes in the two plays are prominent features and add greatly to their attractiveness.

There is nothing original in the incident thus presented on the stage. Heroes and heroines, as well as villains of both sexes, have for a time whereof the memory of the theatre goer runneth not to the contrary, been precipitated into conventional ponds, lakes, rivers and seas. So frequent a catastrophe may fairly be regarded as the common property of all playwrights. The plaintiffs' contention is founded solely upon the circumstance that in their play the river into which the fall takes place is mimicked by a tank filled with real water instead of by an apparatus constructed of cloth, convas, or painted pasteboard. Such a mechanical contrivance, however, is not protected by a copyright of the play in which it is introduced. The decisions which extend the definition of "dramatic composition" so as to include situations and "scenic" effects, do not cover the mere mechanical instrumentalities by which such effects or situations are produced. The plaintiffs upon the argument referred to Daly v. Palmer, 6 Blatchf., 264, as sustaining their contention. That case does not go to such extent. The practicable railroad tracks and the counterfeit locomotives which ran upon them in the two plays analyzed by Judge Blatchford in Daly v. Palmer, suggested the name "railroad scene" as generally descriptive of the portions of these plays in which they were introduced. The tracks and locomotives, however, were mere links in an extended chain of incident, speech and action which together represented a series of events concededly novel, and which, in the opinion of the court, constituted a dramatic composition. Because in both plays there was found the same series of events in the same order, represented in a manner to convey the same sensations and impressions to the spectators, it was held that the representation of the latter was a piracy of a meritorious part of the invention incorporated in the former.

Motion for injunction is denied.

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SUPREME COURT OF PENNSYLVANIA.

TRADE-MARK.

PRATT'S APPEAL.

When a person has acquired the right to use a certain symbol as a trade-mark, an imitator of it will not be protected by the mere act of adding his own name to the label. Such addition is a circumstance and nothing more, to be considered in connection with the whole appearance of the trade-mark, to determine whether it is an imitation.

If the children or other descendants of the owner of a trade-mark continue the manufacture of the goods after their ancestor's death, using upon them the same trade-mark, they acquire a right to it independently of any which might accrue to them by descent. In such a case the question as to the descendibility of trade-marks does not necessarily arise. There is, however, ample and recent authority for saying, not only that a business and its accompanying trade-mark may pass from a parent to his children without administration, but that the business may be divided among the children, and each will have the right to the trade-mark to the exclusion of all the world except his co-heirs.

A manufacturer of butter does not, by buying a portion, or even the whole, of his cream from others, thereby commit a fraud upon the public, so as to lose the right to a monopoly of his trade-mark.

Appeal from the decree of the Court of Common Pleas of Delaware county.

JOHN M. BROOMALL (ISAAC JOHNSON, with him), for appellant.

The trade-mark was personal to the elder Darlington in its essential nature. Brown on Trade-Marks, ¶¶ 87, 90; Dixon v. Guggenheim, 7 Phila., 408; Hegeman v. Hegeman, 8 Daly, 1.

There is no evidence that the trade-mark passed in the administration of the elder Darlington's effects to the father of the present plaintiffs. He showed, therefore, no right thereto. Sebastian on Trade-Marks, p. 96; Singleton v. Bolton, 3 Doug., 293; Hovenden v. Lloyd, 18 W. R., 1132; Marshall v. Pinkham, 38 Am. R., 756; Canal Co. v. Clark, 13 Wall., 321; Manhatton Medicine Co. v. Wood, 108 U. S., 227; Stachelberg v. Ponce, 23 Fed. Rep., 430.

A trade-mark must be used in severalty, and cannot be employed in common by a number of parties. Sebastian on Trade-Marks, 88; Brown on Trade-Marks, 153; Sherwood v. Andrews, 5 Am. L. Reg. (N. S.), 588; Carmichel v. Latimer, 23 Am. R., 481; Marshall v. Pinkham, 38 Am. Rep., 756; Witthaus v. Braun, 44 Md., 303.

The cornucopia, which plaintiffs claim is the *indicium* of the genuineness of their trade-mark, being thus used in different enterprises, only serves to mislead. Sebastian on Trade-Marks, 88; Witthaus v. Braun, 44 Md., 303; Leather Cloth Co. v. American Leather Cloth Co., 11 H. L., 523.

The mixing of other cream and butter with their own, by the plaintiffs, amounts to a fraud, which precludes recovery by them. Pidding v. Howqua, 8 Sm., 477; Phalon v. Wright, 5 Phila., 467; Hobbs v. Francais, 19 How. Pr., 567; Fetridge v. Wells, 13 *Id.*, 385.

The use of defendant's name on his butter precluded the possibility of confounding it with the plaintiff's article. Colladay v. Baird, 4 Phila., 139; Partridge v. Menck, 2 Sandf. Ch., 624.

A. LEWIS SMITH and GEORGE E. DARLINGTON for appellees.

A business and its accompanying incidents, including a trade-mark, may pass from a parent to his children without administration. Leather Cloth Co. v. Am. L. C. Co., 11 H. of L., 523; Kidd v. Johnson, 100 U. S., 617; Milling Co. v. Robinson, 20 Fed. Rep., 217; Southorn v. Reynolds, 12 L. T. (N. S.), 25; Dent v. Turpin, 9 Weekly Rep., 548; Carmichel v. Latimer, 11 R. I., 395; Witthaus v. Braun, 44 Md., 303.

The authorities do not sustain the position that a trade-mark is absolutely indivisible. Banks v. Gibson, 34 Bear, 566; Hine v. Lart, 10 Jur., 106; Robinson v. Finlay, L. R., 9 Ch. D., 487; Condy v. Mitchell, 37 L. T. (N. S.), 268; Young v. Jones, 3 Hughes, 274; Huwer v. Dannenhoffer, 82 N. Y., 499; Emerson v. Badger, 101 Mass., 82.

Where successors to a party's business adopt his trade-mark, there is no fraud in failing to say on it that they are successors. Fulton v. Sellers, 4 Brewster, 42; Dixon Crucible Co. v. Guggenheim, 7 Phila., 408.

The occasional use by the plaintiffs of other cream and butter in manufacturing their product did not amount to a fraud. Dale v. Smithson, 12 Abb. Pr., 237; Edleston v. Vick, 18 Jur., 7.

The use of the trade-mark on defendant's butter was calculated to deceive, notwithstanding the addition of his own name. McLean v. Fleming, 96 U. S., 245; Mack v. Ticknor, 21 Blatch. Ct., 1; Liggett v. Hynes, 20 Fed. Rep., 883; Ayer v. Hall, 3 Brewst., 509; Dixon Crucible Co. v. Guggenheim, 7 Phila., 408; Barlow v. Salaton, Browne on T. M., 388; Blackwell v. Armistead, *Id.*, 600.

Opinion by PAXSON, J. January 8, 1888.

This bill was filed in the court below to restrain the defendant from using plaintiffs' trade-mark. The plaintiffs are farmers, residing in Delaware county, and engaged in the dairy business. They make what is now widely known in many portions of this country as the "Darlington Butter," an article of such superior quality as to demand a ready sale and a high price. The plaintiffs and their immediate ancestors have been engaged in making this butter for a period of about three-quarters of a century. The business was commenced by Jesse Darlington, the grandfather of the plaintiffs, about the year 1810, who continued it to about 1831, when he relinquished it in favor of his son, Jared Darlington, residing on the same farm. Jared continued it until his death, in 1862. Since that time it has been conducted by three of his sons and the widow of a deceased son, the plaintiffs in this bill. During all this period the butter has been stamped with a peculiar print, claimed as a trade-mark, the distinguishing features of which are a cornucopia and the name "Darlington." During the lifetime of the elder Darlingtons (Jesse and Jared), the name of J. Darlington was imprinted on the margin below the lower or smaller end of the horn. Since the death of Jared, and the use of the trade-mark by an amicable understanding between his children, each of the plaintiffs has stamped his butter

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with the cornucopia, and his own or individual name, the name of Darlington being common to it all. So extensive has the business become, that their aggregate production of butter amounts to over 2,000 pounds weekly.

The defendant owns a farm in the same neighborhood, and also makes butter for the market. He has been so engaged since 1873. For some years he used as a print for his butter a stamp which had on it the name of "Pratt," and the words, "Cumberland Dairy, 333," which appears to be the print his father, Thomas Pratt, had used before him. Some time after the death of Jared Darlington, the defendant changed his print, using the cornucopia and stamping the butter with his name.

The court below granted the injunction prayed for in the bill, from which decree the defendant appealed and removed the record into this court for review.

If the defendant's print is an imitation of that of the plaintiffs, if it is calculated to deceive and mislead, the motive of the defendant in adopting it is not material so far as the law of the case is concerned, however much it might affect it in a moral point of view. The protection which equity extends in such cases is for the benefit of the manufacturer and to secure to him the benefits of his reputation, skill and industry. The protection of the public is another consideration, and one that does not usually enter into such cases. A man may be adjudged a wrongdoer and yet have no intention or thought of fraud, as where two traders take the same symbol, each in ignorance that the other uses it, or with an honest doubt as to who has the legal right therein. Browne on Trade-Marks, par. 449. The question, therefore, is, whether the defendant's label or mark is calculated to deceive the public, and to lead them to suppose they are purchasing an article manufactured by the complainants instead of the defendant.

The Master finds as a fact that defendant's print is calculated to mislead the public. In this we cannot say that he committed an error. It is true the two prints when placed side by side present several points of dissimilarity, and the fact that defendant's butter is stamped with his own name was pressed as a reason why there was no danger of deception. The defendant denies any intention of deception, and in this he is sustained by the Master. But the thought naturally suggests itself, why did the defendant abandon the trade-mark or print which he had used for years, and his father before him, and adopt the symbol which had been in use in the Darlington family for over seventy years, unless at some time or in some way he hoped to benefit by the wide reputation which the Darlington butter had obtained?

The Master has found, and we think correctly, that the distinguishing feature of the plaintiffs' trade-mark is the cornucopia. It is a symbol, a device, which the plaintiffs have adopted to mark their butter. Had they used merely the name "Darlington," any other person of that name could have stamped his butter as Darlington's butter. The mere name of a person or of a place, cannot, as a general rule, be appropriated as a trade-mark; at least not in the sense of preventing another person having the same name or residing in the same place from using it. Nor can any word which is generally used to designate the name or quality of an article be so appropriated. This is familiar law and hardly needs the citation of authority. It is sufficient to refer to Glendon Iron Company v. Uhler, 75 Penna., 467; Brown on Trade Marks, sections 157, 177, 182, 195, 243. But when the plaintiffs adopted the cornucopia as a device or symbol to mark their butter, they acquired a property in such device or symbol which they cannot be deprived of by any other Darlington, or any other person whatever. This device when applied to a pound of butter means "Darlington butter," and is so understood, and in this way indicates origin and ownership. The name of the particular plaintiff stamped upon each pound, in addition to the symbol, indicates which particular Darlington made that pound of butter.

The use of a defendant's name on a spurious trade-mark is no defence to a bill for an injunction to prevent a piracy. The Dixon Crucible Company v. Guggenheim, 7 Phil., 416; Gillott v. Esterbrook, 47 Barbour, 455; Boardman v. Meriden Brittania Co., 35 Conn., 402. It is a circumstance, and nothing more, to be considered in connection with the whole appearance of the trade-mark, to determine whether it is an imitation.

It was urged, however, that conceding this symbol to have been a valid trade-mark in the hands of Jesse Darlington, or even of Jared, that upon the death of the latter, it ceased to be the property of any one, and that its use by several members of the family of the latter destroyed its distinctive feature, and left it open to the public to appropriate it.

We cannot assent to this proposition. We do not think it necessary, however, to enter upon an elaborate discussion as to the modes by which a trade-mark may be transferred, nor how far it is descendible upon the death of the person who originally appropriated it. We do not see that the exigencies of this case require it. When Jared Darlington died his children appropriated this device or symbol to their own use. They did so before any one else appropriated or attempted to appropriate it. By an amicable arrangement between themselves each one was allowed to use the cornucopia as a device, each pound of butter being stamped in addition with the name of its manufacturer. It was all Darlington butter. There was no fraud upon the public nor any one else in this. It was not sold as the butter of either Jesse or Jared Darlington. They were both deceased, and it is fair to presume their customers knew it. The business was continued by their descendants bearing the name of Darlington, in the same place and with the same skill. There is no pretence that the butter now made by the present members of the family is not equal in every respect to the best made by their ancestors. Under such circumstances their trade-mark cannot be interfered with by a stranger who has never acquired a right in any way to use it. There is no analogy between this case and the Hougua Tea Case (Pedding v. Howard, 8 Sim., 477); the Night Blooming Cereus Case (Phalon v. Wright, 5 Philada., 467); The Balm of a Thousand Flowers Case (Fedridge v. Wells,

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13 How. Pr. R., 385), and other instances, in which courts of equity have refused to enjoin because of the fraud practiced upon the public. It is not the province of a Chancellor to aid any one in fraud and imposition. The fact that the plaintiffs at rare intervals purchased milk or cream from others to enable them to supply their customers with butter, and in yet rarer instances purchased small amounts of butter for the same purpose, is not of sufficient importance to require discussion. It was not done for the purpose of imposing upon or deceiving their customers. The latter are not complaining, and the defendant has no standing to do so. There was no fraud in it. If the plaintiffs were to purchase all their cream from other farmers, and manufacture it into butter, the defendant would have no right to pirate their trade-mark.

While the cases are not uniform upon the subject, there is ample and recent authority for saying, not only that a business and its accompanying trade-mark may pass from a parent to his children without administration, but that the business may be divided among the children, and each will have the right to the trade-mark to the exclusion of all the world except his coheirs. In the Leather Cloth Company v. American Leather Cloth Company, 11 House of Lords Cases, 523, it was said by Lord Cransworth: "The right to a trade-mark may, in general, treating it as property, or as an accessory of property, be sold and transferred upon a sale and transfer of the manufactory of the goods on which the mark has been used to be affixed, and may be lawfully used by the purchaser. Difficulties, however, may arise where the trade-mark consists merely of the name of the manufacturer. When he dies, those who succeed him (grandchildren or married daughters, for instance), though they may not bear the same name, yet ordinarily continue to use the original name as a trade-mark. And they would be protected against any infringement of the exclusive right to that mark. They would be so protected, because, according to the usages of trade, they would be understood as meaning no more by the use of their grandfather's or father's name, than that they were carrying on the manufacture formerly carried on by him." In Kidd v. Johnson, 100 U. S. R., 617, it was said by Mr. Justice Field: "When a trade-mark is affixed to articles manufactured at a particular establishment and acquires a special reputation in connection with the place of manufacture, and that establishment is transferred, either by contract or operation of law, to others, the right to the use of the trade-mark may be lawfully transferred with it." To the same point are Milling Company, 20 Fed. Rep., 217; Southern v. Reynolds, 12 Law Times, N. S., 75; Dent v. Turpin, 9 Weekly Reporter, 548. See, also, Dixon Crucible Company v. Guggenheim, *supra*.

We have not before us any question arising between the children of Jared Darlington as to their respective right to use this trade-mark as against each other. On the contrary, the contention is between them and a stranger, who shows no right whatever.

We find no error in this record. The decree is affirmed and appeal dismissed at the cost of the appellant.—*Weekly Notes of Cases.*

TEXAS SUPREME COURT ABSTRACT.

SLEEPING-CAR COMPANY'S LIABILITY.

PULLMAN PALACE CAR CO. v. POLLOCK.
(3 Ry. & Corp. L. J., 45.)

The plaintiff paid for a berth in a sleeping-car of the defendant. Entering the car, he placed his valise on the floor in the smoking room. He went out of the car for a short time at a station, leaving the conductor and porter in the car. Returning, he found his valise missing. *Held*, that the sleeping-car company is responsible. The court said: "Enough appears to show that the appellant assumed to the appellee the duties of a carrier, and while it is evidently true that it did not assume the duties and liabilities which the common law imposes upon common carriers as to ordinary freight, or the liabilities which the innkeeper assumes to guests, yet we see no reason why it should not be held responsible, just as any common carrier would be held responsible for a failure to perform the duties which devolve upon the common carrier in relation to the baggage of a passenger which is not given into the carrier's exclusive custody. The true rule in this class of cases we believe to be that asserted by the Supreme Court of Massachusetts, in the case of Lewis v. Sleeping-Car Co., 143 Mass., 269; S. C., 56 Am. Rep., 852. In that case it is said, 'that while it is not liable as a common carrier, or as an innholder, yet it is its clear duty to use reasonable care to guard the passengers from theft, and if through want of such care the personal effects of a passenger, such as he might reasonably carry with him, are stolen, the company is liable therefor. Such a rule is required by public policy, and by the true intent of both the passenger and the company, and the decided weight of authority supports it. Sleeping-Car Co. v. Diehl, 84 Ind., 474; Palace-Car Co. v. Gardner, 3 Penny., 78; Palace-Car Co. v. Gaylord, 23 Am. Law Reg., 788.' The facts that a railway company to whose train a sleeping-car may be attached may not own such car or control its internal management, and that the same may be under the control of a company who does own and operate such car, and that the main compensation for transportation may be paid to the company to whose train the sleeper is attached, do not deprive the company so owning and operating a sleeping-car of the character of a passenger carrier; for the contract of such a company is not only that the passenger may sit and sleep in the car during the journey for which he contracts, but it goes further, and binds the owner of such car to transport the passenger in it or some like carriage to his place of destination, the passenger having paid the fare demanded by both companies. If passengers by railway train retain the exclusive custody of their baggage, then the carrier is not responsible for its loss, unless this results from the carrier's negligence, and the failure of a passenger to use reasonable care in reference to it will defeat his right to recover. In the case before us, the court below, in the absence of conclusions of fact and law showing to the contrary, must be presumed to have decided this case in accordance with the rules we have announced. This involved a finding of fact that the valise was

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lost by reason of the failure of appellant to use such care as the law requires, and without failure on the part of the appellee to use that care required of him."

Bill of Particulars.

In a recent action before a justice of the peace to recover compensation for repairing and cleaning a fine French clock, the defendant insisted that the jeweler should specifically state each item of his account, and in compliance with the order of "his honor," the following "bill of particulars" was rendered:

To removing alluvial deposit and oleaginous conglomerate from clock *a la France*	$0.50
To replacing in appropriate juxtaposition the constituent components of said clock	0.50
To lubricating with oleaginous solution the apex of pinions of said clock	0.50
To adjusting horologically the isochromal mechanism of said clock	0.50
To equalizing the acoustic resultant of escape-wheel percussion upon the verge-pallets of said clock	0.50
To adjusting the distance between the centre of gravity of the pendulum and its point of suspension, so that the vibration of the pendulum shall cause the index-hand to indicate approximately the daily arrival of the sun at its meridian height	0.50
Total	$3.00

Decrease in Litigation.

The American Law Review, in the course of some sensible suggestions on the decrease of litigation, says: "It is believed that in several of the principal American jurisdictions four kinds of litigation predominate, in respect of the number of actions, over all others—1. Actions for damages predicated upon negligence, generally brought against corporations, and for the most part against railway companies. In most American jurisdictions actions of this kind outnumber those which are brought on any other specific ground. 2. Actions growing out of assignments for the benefit of creditors. In these cases there is always a struggle on the part of some creditors to get a preference over the others, and, as there is not enough for all, none are satisfied—a state of things which produces a litigious spirit. 3. Suits to enforce mechanics' liens. In these cases the owner, after having paid the principal contractor, is called upon to pay a portion of the same over again either to a sub-contractor, to a material-man, or to the mechanics and laborers who worked upon the structure. He must do this or lose the building itself; and, as men are not fond of paying other people's debts, these cases are frequently defended with spirit. 4. Special tax bills in cities and towns. These, it is well known, are granted by the municipality, under the authority of its charter and in pursuance of its ordinances, to contractors for the construction of roads, sewers and other improvements, the expenses of which are charged upon the adjoining land as a lien. Land-owners are not fond of paying charges which they have not incurred, about which they were not consulted, and which, in many cases, they regard as unnecessary; and hence they defend against suits upon these bills, and in many cases upon the most hopeless grounds.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

January 24.

10977. Wm. Birney v. Uriah H. Painter et al. For partition. Com. sol., Wm. Birney.

January 25.

10978. Prospect Hill Cemetery v. The German Evangelical Society et al. To annul a deed, subdivision and conveyance. Com. sol., Wm. F. Mattingly.

10979. Catherine Hutchinson et al. v. John C. Hughes et al. For partition of lot.

10980. Elizabeth Howell, alledged lunatic. Upon petition of Wm. B. Webb et al. Com. sol., H. E. Davis.

January 26.

10981. Almira V. Brown et al. v. H. W. Beall et al. Com. sol., D. O'C. Callaghan.

10982. Isabella Hagan v. Zachariah Hagan. For divorce. Com. sol., B. G. Lovejoy.

10983. Willet & Libbey v. Thomas Collins. To enforce mechanic's lien. Com. sol. W. G. Johnson.

10984. Same v. Francis P. Donnelly. To enforc emechanic's lien. Com. sol., Same.

10985. Wm. Whalen v. Warner E. Pickrel et al. To enforce mechanic's lien. Com. sols., Gordon & Gordon.

January 27.

10986. Wilson E. Brown et al. v. Dora E. Boker. To enforce mechanics' lien. Com. sols., Newton & Lavender.

10987. Alice G. Sykes v. Henry L. Sykes. For divorce. Com. sol., E. B. Hay.

10988. John Angerman v. Frederick J. Kohler et al. Com. sol., F. H. Mackey.

January 28.

10989. Susan E. Murray et al. v. Mary W. Joyce et al. To appoint trustee. Com. sol., Chas. A. Elliot.

10990. Courtney R. Jones v. Matthew T. Server et al. To enforce mechanics' lien. Com. sol., A. B. Duvall.

CIRCUIT COURT.—New Suits at Law.

January 21.

28407. Francis X. Ganter v. Thomas Muntz. Acc't, $150. Plffs attys, Garnett and Mackall.

28408. The District of Columbia v. Wm. W. Rapley. Appeal. Defts atty, E. A. Newman.

28409. Elizabeth J. Hamilton v. Wm. H. Michaels. Appeal. Defts atty, E. C. Weaver.

28410. Hattie Luckett, by her next friend, Wm. Gray, v. P. R. R. Co. Damages, $50,000. Plffs atty, L. Kent.

28411. Thomas J. Fisher et al. v. Edward W. Koch. Acc't, $200. Plffs attys, Morris & Hamilton.

January 23.

28412. James H. Bell v. Linden W. Worthington. Appeal. Defts atty, H. B. Moulton.

January 24.

28413. George T. Dunlop v. Abraham Nutersbaugh. Note, $280. Plffs attys, C. M. & H. S. Matthews.

28414. Same v. Same. Note, $149.58. Plffs attys, Same.

28415. Samuel E. Gorman v. George E. Kirk. Appeal. Defts atty. John A. Clarke.

28416. Anton Eberly v. A. Behrend. Certiorari. Defts atty, N. H. Miller.

January 25.

28417. John T. Wood v. Henry W. Hewlett. Judgment of Justice Davis. Plffs atty, W. J. Jackson.

28418. Freeborn G. Smith v. Francis H. Ford et al. Replevin. Plffs atty, J. J. Darlington.

January 28.

28419. Basil Bell v. Herdic Phaeton Co. Damages, $3,000. Plffs attys, Gordon & Gordon.

28420. Victor F. Lawson et al. v. W. Scott Smith. Note, $1,160. Plffs atty, F. G. Kimball.

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Rule of Court.

RULE 20 * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 26th, 1888.

In the case of Martin F. Morris, Administrator of Hannah Maria Ludlow, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 17th day of February, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

5 Test: DORSEY CLAGETT, Register of Wills.

No. 2802. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 27th, 1888.

In the case of R. Ross Perry, Executor of Harriet McCeney, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 24th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

5 Test. DORSEY CLAGETT, Register of Wills.

No. 2591. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal Estate of Ellen J. Griswold, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of January, 1888.

5 JOHN RIDOUT, Ex'r, 470 La. ave.

No. 2961. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of January, 1888.

Henry Strong v. Wm. Pitt Shearman et al. } No. 10,768. Eq. Docket 27.

On motion of the plaintiff, by Mr. Ferdinand Schmidt, his solicitor, it is ordered that the defendants, Mary W. Shearman, Henry S. Shearman, William Pitt Shearman, and Lawrence H. Shearman, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks, before said rule-day, in the Washington Law Reporter.

The object of this suit is to remove a cloud from the title to the twelve inches of original lot 13, in square 290, immediately next to the east 22 feet 6 inches of said lot, by a depth of 75 feet 6 inches.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: R. J. MEIGS, Clerk, &c.

5 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 27th, 1888.

In the matter of the Estate of Mary S. Norman, late of the District of Columbia, deceased.

Application for the Probate of the Codicil or modification of the last Will and Testament of the said deceased, has this day been made by Isaac F. Norman.

All persons interested are hereby notified to appear in this Court on Friday the 24th day of February next, at 11 o'clock a. m., to show cause why the Codicil or modification of the said Will should not be proved and admitted to Probate as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

5 Test: DORSEY CLAGETT, Register of Wills.

No. 2951. Ad. D. 13. Hildebrant & Morrison,
1331 F st. n. w., Washington, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 27th, 1888.

In the matter of the Estate of Lorenzo Dow Merchant, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary C. Merchant.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of February next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

5 Test: DORSEY CLAGETT, Register of Wills.

Riddle, Davis & Padgett, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Anna Walsh, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of January, 1888.

5 JOHN T. SMITH, U. S. Navy,
Adm'r, 1128 6th st. n. w.

Thos. F. Miller, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William H. King, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1888.

5 GEORGE S. KING, Adm'r, Anacostia, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Elisha Goddard, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers there of, to the subscribers, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1888.

5 OTIS F. PRESBREY, Adm'r c. t. a.,
Public Opinion Office, cor. 9th & Pa. ave.

No. 2960. Ad. D. 13. John Ridout, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Francis C. Goode**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of January, 1888.

5 G. BROWN GOODE, Ex'r, Smithsonian Institute.

No. 2988. Ad. D. 13. W. K. Duhamel, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John M. Barclay**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.

3 JAMES R. YOUNG, Ex'r, 1506 Q st. n w.

E. B. Hay, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles S. Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of January, 1888.

3 HAMILTON E. LEACH, Adm'r, 400 7th st. s. w.

No. 2956. Ad. D. 13. C. M. SMITH, T. M. FIELDS, Proctors

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Moses Walsky**, late of Chicago, Ill., deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1888.

3 SIMON WOLF, Adm'r, 921 F st. n. w.

No. 2958. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ambrose W. Thompson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.

3 CELESTE THOMPSON, Ex'x, 1720 H st. n. w.

No. 2934. Ad. D. 13. M. F. MORRIS, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis P. Shoemaker v. Francis D. Shoemaker et al. } No. 10,821. In Equity.

Upon consideration of the report of William G. Johnson, trustee, this day filed, it is by the Court, this 9th day of January, 1888, ordered that the sale of part of lots numbered fourteen (14) and sixteen (16), in square numbered five hundred and one (501), to Andrew J. Sanford, for eighteen hundred dollars ($1,800), as reported by the said trustee, be and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before February 10th, 1888.

Provided that a copy of this order be published for three successive weeks in the Washington Law Reporter before said day.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

2 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 25th day of January, 1888.

Caroline Green et al., Complainants, v. George W. Snow et al., Defendants. } Equity. No. 9,674.

On motion of the complainants, by C. G. Berryman, their solicitor, it is ordered that the defendants, **Martha Carroll, Dennis Anderson, Rebecca Snow, John T. Snow, Daniel B. Snow and Virginia Snow**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a sale for the purpose of partition of the east half of lot numbered four (4) in square numbered five hundred and thirty-eight (538), in the city of Washington, D. C., as will more fully appear by the bill of complaint in this cause filed.

By the Court. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

4 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Anna E. Sleator**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of January, 1888.

4 AUGUSTA C. G. S. HAYCOCK, Adm'x c. t. a., 1832 19th st.

No. 2901. Ad. D. 13. Wm. G. Johnson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard James Blakelock**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1888.

4 CATHARINE E. BLAKELOCK, Adm'x c. t. a., 619 6th st. s. w.

No. 2962. Ad D. 13. Wm. Twombly, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Wilhelmina Walter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.

3 WM. J. WALTER, Ex'r, 1113 5th st. n. w.

No. 2943. Ad. D. 13. FERDINAND SCHMIDT, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of January, 1888.

Annie L. Kerby v. Frank A. Kerby. } No. 10,806. Docket 27.

The Marshal having returned the defendant "Not to be found," on motion of the plaintiff, by Mr. Fred. W. Jones, her solicitor, it is ordered that the defendant, **Frank A. Kerby**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is procure a divorce from the defendant upon the grounds stated in the bill, which are adultery and cruelty of treatment.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

2 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

January 20th, 1888.

In the matter of the Estate of **Bernard Overman**, deceased,

Application for Letters of Administration on the estate of the said deceased, has this day been made by his widow, Elizabeth Overman.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of February, 1888, next, at 11 o'clock a. m., to show cause why said Letters should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, A. J.
4 Test: DORSEY CLAGETT, Register of Wills.
W. B. Edmonston, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 20th, 1888.

In the matter of the Estate of **Obediah Kimmell**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph Gawler,

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of February, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
4 Test: DORSEY CLAGETT, Register of Wills.
No. 2942. Ad. D. 13. N. H. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBJA.

Holding a Special Term for Orphans' Court Business.

January 20th, 1888.

In the matter of the Estate of **Richard Byron**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Eliza Byron.

All persons interested are hereby notified to appear in this Court on Friday the 10th day of February next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
4 Test: DORSEY CLAGETT, Register of Wills.
No. 2946. Ad. D. 13. S. C. Mills, Proctor.

THIS IS TO GIVE NOTICE,

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth D. Lowry**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate,

Given under our hands this 13th day of January, 1888.
4 WILLIAM L. DUNLOP, } Executors.
WILLIAM LAIRD, Jr. }
No. 2937. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Henry A. Merrick**, late of the District of Colmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.
4 ERNEST M. MERRICK, Adm'r c. t. a.,
416 Spruce st., Le Droit Park.
No. 2955. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of January, 1888.

Lewis Cook v. **Frank Waters et al.** } No. 10,303. Equity Docket 26.

On motion of the plaintiff, by Mr. H. B. Moulton, his solicitor, it is ordered that the defendants, **James Brooks** and **John Brooks** cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside two alleged deeds of trust as fraudulent, purporting to convey the land and premises known as the west half of lot numbered 39, in Hopkins' recorded subdivision of square 110, in the city of Washington, D. C. And also, for the appointment of a trustee to sell and convey the said property, and for a distribution of the proceeds thereof among the heirs-at-law of James Washington, deceased.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
4 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

January 20th, 1888.

In the case of Eliza Ann Brooks, Administratrix of **Joseph Brooks**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 24th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

4 Test. DORSEY CLAGETT, Register of Wills.
No. 2556. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of January, 1888.
3 JAMES WILKINSON, Ex'r, 1435 Q st. n. w.
No. 2920. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

D. Appleton & Co. v. **Eu'emio Abadiano.** } No. 28,301. At Law.

On motion of the plaintiffs, by Mr. Maddox, their attorney, it is ordered that the defendant, **Eu'emio Abadiano**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the goods and chattels of defendant, attached by the Marshal in the hands of S. P. Langley, Secretary of the Smithsonian Institution, December 10, 1887, to the satisfaction of a claim of the plaintiff's for $1,217.90, with interest and costs, as claimed in the above-entitled cause.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
3 By J. R. YOUNG, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rosina M. Kleiber**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1888.
4 M. D. PECK, Ex'r, 934 F st. n. w.
No. 2931. Ad. D. 13.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of January, A. D. 1888.

Henry Wise Garnett, Trustee, Plff.
v,
Martin Coryell et al., Defts. } Eq. No. 10,137.

On motion of the complainant, by Conway Robinson, jr., and D. S. Mackall, his solicitors, it is, this 5th day of January, A. D. 1888, by the Court, ordered that the defendants, **Alice C. Erismann, Emma L. C. Ayers** and **Torbert Coryell**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a conveyance from the defendants to this cause, as the sole heirs-at-law of Lewis S. Coryell, deceased, of the property devised to George W. Riggs, trustee, as to which the complainant has been substituted in place of said Riggs as trustee.

By the Court. WM. M. MERRICK, A. J.
True copy. Test. R. J. MEIGS, Clerk, &c.
3 By H. W HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Matthew G. Emery, Jr.**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of January, 1888.
3 HELEN L. EMERY, Ex'x, 411 Fourth st. n. w.
No. 2939. Ad. D. 13. W. K. DUHAMEL, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Michael McAllister**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of January next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 11th day of January, 1888.
her
3 MARGARET ⋈ McALLISTER, Ex'x.
mark.
No. 2948. Ad. D. 13. D. O'C. CALLAGHAN, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

January 13th, 1888.

In the matter of the Estate of **Agnes Maria Smith**, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, having been made by Blair Lee, of Montgomery Co., Md.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of February, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and the Evening Star previous to the said day.

By the Court. WM. M. MERRICK, Justice.
3 Test: DORSEY CLAGETT, Register of Wills.
No. 2935. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration d. b. n. c. t. a. on the personal estate of **Ann C. Carroll**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subecriber, on or before the 27th day of July, 1888, next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of January, 1888.
3 GEORGE F. APPLEBY, Adm'r d. b. n. c. t. a.
of the estate of Ann C. Carroll, dec'd.
No. 1036. Ad. D. 10.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

Edward Mitchell
v.
Chloe Ann Mitchell et al. } No. 10,737. Equity Docket 27.

On motion of the complainant, by Messrs. Campbell Carrington and J. G. Bigelow, his solicitors, it is ordered that the defendants, **Martha Jane Sands, Josephine Filmore**, and **Mary Douglas**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside the deed of conveyance dated May 7, 1885, of subiot 74, in square 510, situate in the city of Washington, D. C., to defendants, Lucy, Jane, Mary and Josephine Mitchell, and to sell the same, and to distribute the proceeds between the complainant and the infant defendants, Alice, Henrietta and Daniel Mitchell.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
2 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William E. Howard**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.
2 H. E. HOWARD, Ex'x, 1828 H st. n. w.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William H. Emory**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of January, 1888.
2 MATILDA W. EMORY, Ex'x, 1718 H st.
No. 2940. Ad. D. 13. Woodbury Blair, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of January, 1888.

Jennie A. Smith
v.
Edward A. Smith. } Equity. No. 10,824.

And now, to-wit, January 13th, 1888, on motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

And that notice hereof be published once a week for three successive weeks in the Washington Law Reporter and the National Republican.

The object of this suit is to obtain a divorce on the ground of non-support and desertion.

By the Court. WM. M. MERRICK, A. J.
True copy. Test: R. J. MEIGS, Clerk, &c.
3 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 13th, 1888.

In the case of George A. Smith, Administrator of **David Smith**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

3 Test: DORSEY CLAGETT, Register of Wills.
No. 2584. Ad. D. 13. WM. TWOMBLEY, Proctor.

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Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
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Atkins' Chancery Reports, vols. 1, 2, 3.

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Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
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Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

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Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
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Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
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Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
Lovelass on Wills.

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McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
Powell on Devises.
Preston on Abstracts of Title, 2 vols. in one.

Railway Law (Bonner), 1878.
Ray's Medical Jurisprudence of Insanity, 1853.
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Roper on Wills.

Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
Smith's Probate Law, 1868.
Smith's Elements of the Law.
Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

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Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
Willis on Trusts.
Williams on Executors, &c., vol. 2, Thobault's Notes.

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ESTABLISHED 1874.
WM. STONE ABERT, - - - - - Editor
VOL. XVI. - - - - - - - No. 6
WASHINGTON, D. C. - - - - FEBRUARY 8, 1888

Recent Decisions of the United States Supreme Court.

In this week's issue, we publish in full two very important decisions of the Supreme Court of the United States, prepared by Mr. Justice Matthews. The Western Union Telegraph case was certified to the Supreme Court from the Circuit Court of the United States for the Southern District of Iowa, the trial by jury being waived, and the judges upon the trial being divided in opinion as to certain questions of law.

The case of Gumbel v. Pitkin, the Louisiana case, involves interesting questions arising in the trial of attachment suits, where there is a conflict of jurisdiction between State and United States courts in regard to the citizenship of several attaching creditors, as well as the priority of lien acquired by "constructive levy" of process by a sheriff, where no actual seizure was made, and the property was in the custody of the United States marshal.

This cause was considered by the court during the October Term, 1884, upon a motion to dismiss and affirm. Both motions were then denied. The opinion of the court, delivered by Mr. Justice Miller, is reported in volume 113 U. S. Reports, p. 545.

The record shows that a large number of the creditors of Joseph Dreyfus, of the city of New Orleans, sued him in the Circuit Court of the United States for the Eastern District of Louisiana, and in these actions writs of attachment were issued on Sunday, October 28, 1883, and levied on the goods of Dreyfus by the marshal, who took possession of them and of the defendant's store.

On Saturday evening, October 27, 1883, the plaintiff in error, Cornelius Gumbel, a citizen of Louisiana, filed his suit in the State court, which he prosecuted to judgment, against Joseph Dreyfus (also a citizen of Louisiana), and obtained writs of attachment, which were not executed that night.

Immediately after midnight, viz: On Monday morning, October 29, the sheriff was on the spot for the purpose of seizing and taking possession of the contents of the store directed to be seized. He found the doors closed, the store being in possession of a deputy marshal, who refused admission. The sheriff did everything in his power to seize the goods, and served process of garnishment upon the marshal.

The "Sunday writs" were all either abandoned or dismissed by the court.

Fearing that these Sunday writs were invalid, the same creditors, on Monday morning, filed new suits and procured other writs of attachment, which were placed in the marshal's hands. These latter writs were subsequent in point of time to the sheriff's "constructive levy."

Then Gumbel, the plaintiff in error, filed his petition for relief in the Circuit Court, which would in technical phraseology, under the Code of Practice of Louisiana, be denominated an "opposition or intervention" of a third person, in which he asked that he be allowed to share in the distribution of the proceeds of sale, according to the priority of the alleged "constructive levy" of the sheriff. In the Circuit Court Gumbel's petition was dismissed, but he has at last been successful in the Supreme Court.

SUPREME COURT OF THE UNITED STATES.

REPORTED BY WM. STONE ABERT.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
v.
GEORGE F. HALL.

Decided January 30, 1888.

1. In an action brought against a telegraph company by the sender of an unrepeated message, to recover damages for negligence in the transmission and prompt delivery of a telegram directing the purchase of ten thousand barrels of petroleum, where the evidence fails to disclose any actual damage sustained beyond the amount paid for transmitting the message, the plaintiff is limited in his recovery to that amount.

2. As there was no order to sell, or evidence that the plaintiff would have sold next day, he is entitled to recover nominal damages only, and not the difference in value of the oil if it had been purchased when the telegram should have been delivered, and the market price to which it had risen on the next day.

3. The condition printed on the blank form upon which the message was written, exempting the company from liability for damages in any case where the claim is not presented in writing within sixty days after sending the message, does not bar the right of recovery where the action is instituted on the claim at the same time it is presented.

Error to the Circuit Court of the United States for the Southern District of Iowa.

WAGER SWAYNE and RUSH TAGGART, for plaintiff in error.

CROM. BOWEN, WHITING S. CLARK and CHAS. A. CLARK, for defendant in error.

STATEMENT.

This was an action at law brought in the Circuit Court of Polk County, Iowa, by George F.

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Hall against The Western Union Telegraph Company, and by the defendant removed, on the ground of citizenship, to the Circuit Court of the United States for the Southern District of Iowa. The action was far the recovery of damages for alleged negligence on the part of the defendant in delaying the delivery of a telegraphic message received by it from the plaintiff at Des Moines, in the State of Iowa, to be delivered to the party to whom it was addressed at Oil City, in the State of Pennsylvania. The cause was submitted to the court, a jury having been waived in writing. A judgment was rendered in favor of the plaintiff for the sum of $1,800. The cause is brought here by a writ of error upon a certificate of a division of opinion between the judges upon certain questions which arose during the course of the trial, which questions, together with the facts necessary for their determination, are certified to us as follows:

"The court finds the following as the material facts in the case:

"The plaintiff at eight o'clock a. m., November 9th, 1882, furnished to the defendant, a telegraph company engaged in the business of receiving and sending telegraph dispatches at its office in Des Moines, Ia., a message in the following form, and plainly written on one of the usual blank forms furnished by the company:

'Form No. 2.—'The Western Union Telegraph Company.

'All messages taken by this company are subject to the following terms. To guard against mistakes or delays the sender of a message should order it repeated; that is, telegraphed back to the originating office for comparision. For this one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured; nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages. And this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination. Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing stating agreed amount of risk and payment of premium thereon, at following rates, in addition to the usual charge for repeated messages, viz: one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance. No employe of the company is authorized to vary the foregoing. No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers he acts for that purpose as the agent of the sender. Messages will be delivered free within the established free-delivery limits of the terminal office; for delivery at a greater distance a special charge will be made to cover the cost of such delivery. The company will not be liable for damages in any case where the claim is not presented in writing in sixty days after sending the message.

'NORVIN GREEN, *President.*

'THOS. T. ECKERT, *General Manager.*

'Receiver's No. ——. Time filed, 8 a. m. —— check.

'Send the following message, subject to the above terms, which are agreed to.

'11, 9, 1882.

'To Chas. T. Hall, Exchange, Oil City, Pa.:

'Buy ten thousand if you think it safe. Wire me. 'GEO. F. HALL.

'Read the notice and agreement at the top.'

"The same being furnished and received by the defendant for immediate transmissal to Charles T. Hall, at Oil City, Penna., the usual and ordinary charge therefor being paid by plaintiff. Through the negligence and want of ordinary care on part of defendant's employe at Des Moines the message so received was forwarded to Oil City, Penna., in an imperfect condition, in this, that the name of the party to whom it was addressed was wholly omitted. The message was received at Oil City, Penna., at 11 o'clock a. m., November 9th.

"The operator of defendant at Oil City sent the message to the building known as the Exchange, which was used by a board of trade engaged in the business of buying and selling petroleum, the hours of business extending from 10 a. m. until 4 p. m. The officers of the exchange or board of trade refused to receive the dispatch in question, and thereupon the operator at Oil City telegraphed to Des Moines for the purpose of ascertaining to whom the dispatch should be delivered, and thus ascertaining for whom it was intended, delivered it to Charles T. Hall at six o'clock p. m., November 9th, 1882. Had it not been for the error in sending the dispatch without including the name of Charles T. Hall it would have been delivered to him at Oil City at 11.30 a. m., November 9th, 1882. The meaning of the dispatch was to direct Charles T. Hall to buy ten thousand barrels of petroleum if in his judgment it was best to do so. Had the dispatch upon its first receipt at Oil City, Penna., been promptly delivered to Charles T. Hall he would, by twelve m. of November 9th have purchased ten thousand barrels of petroleum at the then market price of $1.17 per barrel for the plaintiff. When the dispatch was delivered to Charles T. Hall the exchange had been closed for that day, so that said Hall could not then purchase the petroleum ordered by plaintiff. At the opening of the board the next day the price had advanced to $1.35 per barrel, at which rate said Charles T. Hall did not deem it advisable to make the purchase, and hence did not do so.

"It is not disclosed in the evidence whether the price of petroleum has advanced or receded since that date, November 10th, 1882. The operators acting for the defendant had no other knowledge of the meaning or purpose of the dispatch than is to be gathered from the message itself.

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"The plaintiff brought this action to recover damages for the failure to properly and promptly transmit the dispatch in question in the Circuit Court of Polk County, Iowa, the original notice being served upon the defendant on the 22d day of December, 1882. Under the statutes of Iowa, actions in the courts of that State are commenced by serving upon the defendant an original notice, which is signed by the plaintiff or his attorney, and is addressed to the defendant. No summons or writ under the seal of the court is issued. The notice in this case was addressed to the defendant, and, after entitling the cause, proceeded as follows: 'You are hereby notified that on or before the 22d day of December, 1882, the petition of plaintiff in the above-entitled cause will be filed in the office of the clerk of the Circuit Court of the State of Iowa in and for Polk County, Iowa, claiming of you the sum of fifteen hundred dollars, as money justly due from you as a loss and damage suffered by the plaintiff by reason of your negligent failure to send and deliver a telegram, as set forth in said petition, on November 9th, 1882, from plaintiff to Chas. T. Hall, at Oil City, Pa., and that, unless you appear thereto and defend before noon of the second day of the January Term, A. D. 1883, of the said court, which will commence on the 2d day of January, A. D. 1883, default will be entered against you and judgment rendered thereon. Crom. Bowen and Whiting S. Clark, attorneys for plaintiff.'

"No other presentation of the claim was made by plaintiff. Upon the foregoing facts it is the opinion of the presiding judge that the law is with the plaintiff, and that he is entitled to judgment in the sum of eighteen hundred dollars, and it is so ordered as the judgment of the court.

"The judges holding said circuit court, and before whom said cause was tried, hereby certify that on said trial of said cause they were divided in opinion, and were unable to agree upon the following questions of law arising on said trial and necessary to be determined in order to finally determine said cause, to wit:

"1st. Can the defendant, having in the usual line of its business accepted said message from plaintiff for transmissal to the party named therein at Oil City, Pa., and having received its usual charge for such service, be heard to say that it was not bound to exercise ordinary care in transmitting the same, and that it is only liable to the plaintiff in damages in case of gross negligence on its part?

"2d. Under the contract legally existing between the plaintiff and defendant, whereby the latter assumed the duty of forwarding said message, the same being an unrepeated message, was the defendant bound only to the exercise of slight care or to the exercise of ordinary care?

"3d. Under the contract legally existing between plaintiff and defendant, whereby the defendant assumed the duty of forwarding said message, the same being an unrepeated message, can the defendant, in any event, be held to respond in damages beyond the amount paid to the company for forwarding the said dispatch?

"4th. Admitting the liability of defendant to respond in damages beyond the sum paid for forwarding the message, what rule is to govern in ascertaining the same? Are the damages merely nominal, or is plaintiff entitled to the difference in value of the oil at the time it would have been purchased for plaintiff had the message been properly forwarded and the value at the time it could have been purchased after the actual delivery of the message to Charles T. Hall, at Oil City, Pa., it being admitted that he did not make the purchase for the reason that, in his judgment, the price on the morning of November 10th, 1882, was too high to justify purchasing?

"5th. Was the message so obscure and uncertain on its face that the defendant should not be held to know that it pertained to a transaction involving loss and damage if the message was not properly and promptly forwarded?

"6th. Was the service of the original notice in this cause a sufficient compliance with the clause in the contract providing that 'the company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message? If not, is the right of recovery barred by the failure to present the claim in writing?"

Mr. Justice MATTHEWS delivered the opinion of the court.

The view we take of this case requires us, in answer to the fourth question certified, to say that, in the circumstances disclosed by the record, the plaintiff was entitled only to recover nominal damages, and not the difference in value of the oil if it had been purchased on the day when the message ought to have been delivered and the market price to which it had risen on the next day. As the judgment was rendered in his favor for the latter sum, it must be reversed on that account, and, upon the facts found by the court, judgment rendered for nominal damages only, which finally disposes of the litigation. It, therefore, becomes unnecessary to consider or decide any of the other questions certified to us.

It is found as a fact that if the dispatch upon its first receipt at Oil City had been promptly delivered to Charles T. Hall, to whom it was addressed, he would by twelve o'clock on that day have purchased ten thousand barrels of oil at the market price of $1.17 per barrel on the plaintiff's account. He was unable to do so in consequence of the delay in the delivery of the message. On the next day the price had advanced to $1.35 per barrel, and no purchase was made, because Charles T. Hall, to whom the message was addressed, did not deem it advisable to do so, the order being conditional on his opinion as to the expediency of executing it. If the order had been executed on the day when the message should have been delivered, there is nothing in the record to show whether the oil purchased would have been sold on the plaintiff's account on the next day or not; or that it was to be bought for re-sale. There was no order to sell it, and whether or not the plaintiff would or would not have sold it is altogether uncertain. If he had not done so, but had continued to hold the oil bought, there is also nothing in the record to show whether, up to the time of the bringing of this action, he would or would not have made a profit or suffered a loss, for it is not disclosed in the record whether during that period the price of oil advanced or receded from the price at the date of the intended

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purchase. The only theory, then, on which the plaintiff could show actual damage or loss is on the supposition that, if he had bought on the 9th of November, he might and would have sold on the 10th. It is the difference between the prices on those two days which was in fact allowed as the measure of his loss.

It is clear that in point of fact the plaintiff has not suffered any actual loss. No transaction was in fact made, and there being neither a purchase nor a sale, there was no actual difference between the sums paid and the sums received in consequence of it, which could be set down in a profit and loss account. All that can be said to have been lost was the opportunity of buying on November 9th, and of making a profit by selling on the 10th, the sale on that day being purely contingent, without anything in the case to show that it was even probable or intended, much less that it would certainly have taken place.

It has been well settled since the decision in Masterton v. The Mayor of Brooklyn, 7 Hill, 61, that a plaintiff may rightfully recover a loss of profits as a part of the damages for breach of a special contract, but in such a case the profits to be recovered must be such as would have accrued and grown out of the contract itself as the direct and immediate result of its fulfillment. In the language of the Supreme Judicial Court of Massachusetts in Fox v. Harding, 7 Cush., 516: "These are part and parcel of the contract itself, and must have been in the contemplation of the parties when the agreement was entered into. But if they are such as would have been realized by the party from other independent and collateral undertakings, although entered into in consequence and on the faith of the principal contract, then they are too uncertain and remote to be taken into consideration as a part of the damages occasioned by the breach of the contract in suit." This rule was applied by this court in the case of The Philadelphia, Wilmington and Baltimore R. R. Co. v. Howard, 22 Howard, 307. In Griffin v. Colver, 16 N. Y., 489, the rule was stated to be that "the damages must be such as may fairly be supposed to have entered into the contemplation of the parties when they made the contract; that is, they must be such as might naturally be expected to follow its violation; and they must be certain both in their nature and in respect to the cause from which they proceed. The familiar rules on this subject are all subordinate to these. For instance, that the damages must flow directly and naturally from the breach of the contract, is a mere mode of expressing the first; and that they must not be the remote but proximate consequence of such breach, and must not be speculative or contingent, are different modifications of the last."

In Booth v. Spuyten Duyvil Rolling Mills Co., 60 N. Y., 487, the rule was stated to be that "the damages for which a party may recover for a breach of a contract are such as naturally and ordinarily flow from the non-performance; they must be proximate and certain, or capable of certain ascertainment, and not remote, speculative or contingent." In White v. Miller, 71 N. Y., 133, it was said: "Gains prevented, as well as losses sustained, may be recovered as profits, when they can be rendered reasonably certain by evidence, and have naturally resulted from the breach."

In cases of executory contracts for the purchase or sale of personal property ordinarily, the proper measure of damages is the difference between the contract price and the market price of the goods at the time when the contract is broken. This rule may be varied according to the principles established in Hadley v. Baxendale, 9 Exch., 341; 23 L. J. Exch., 179, where the contract is made in view of special circumstances in contemplation of both parties. That well-known case, it will be remembered, was an action against a carrier to recover damages occasioned by delay in the delivery of an article, by reason of which special injury was alleged. In the application of the rule to similar cases, where there has been delay in delivering by a carrier which amounts to a breach of contract, the plaintiff is not always entitled to recover the full amount of the damage actually sustained; *prima facie* the damages which he is entitled to recover would be the difference in the value of the goods at the place of destination at the time they ought to have been delivered and their value at the time when they are in fact delivered. Horn v. Midland Railway Co., L. R., 8 C. P., 131; Cutting v. Grand Trunk Railway Co., 13 Allen, 381. Any loss above this difference sustained by the plaintiff, not arising directly from the delay, but collaterally by reason of special circumstances, can be recovered only on the ground that these special circumstances, being in view of both parties to the contract, constituted its basis. Simpson v. London, etc., Railway Co., L. R., 1 Q. B. D., 274. So the loss of a market may be made an element of damages against a carrier for delay in delivery, where it was understood, either expressly or from the circumstances of the case, that the object of delivery was to get the benefit of the market. Pickford v. Grand Junction Railway Co., 12 M. & W., 766. In Wilson v. Lancashire, etc., Railway Co., 9 C. B., N. S., 632, the plaintiff was held entitled to recover for the deterioration in the marketable value of the cloth by reason of delay in the delivery, whereby the season for manufacturing it into caps, for which it was intended, was lost.

The same rule, by analogy, has been applied in actions against telegraph companies for delay in the delivery of messages, whereby there has been a loss of a bargain or a market. Such was the case of The United States Telegraph Co. v. Wenger, 55 Pa. St., 262. There the message ordered a purchase of stock, which advanced in price between the time the message should have arrived and the time when it was purchased under another order, and the advance was held to be the measure of damages. There was an actual loss, because there was an actual purchase at a higher price than the party would have been compelled to pay if the message had been properly delivered, and the circumstances were such as to constitute notice to the company of the necessity for prompt delivery. The rule was similarly applied in Squire v. Western Union Telegraph Co., 98 Mass., 232. There the defendant negligently delayed the delivery of a message accepting an offer to sell certain goods at a certain place for a certain price, whereby the plaintiff lost the

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bargain, which would have been closed by a prompt delivery of the message. It was held that the plaintiff was entitled to recover, as compensation for his loss, the amount of the difference between the price which he agreed to pay for the merchandise by the message, which if it had been duly delivered would have closed the contract, and the sum which he would have been compelled to pay at the same place in order, by the use of due diligence, to have purchased a like quality and quantity of the same species of merchandise. There the direct consequence and result of the delay in the transmission of the message was the loss of a contract which, if the message had been duly delivered, would by that act have been completed. The loss of the contract was, therefore, the direct result of the defendant's negligence, and the value of that contract consisted in the difference between the contract price and the market price of its subject matter at the time and place when and where it would have been made. The case of True v. International Tele. Co., 60 Me., 1, cannot be distinguished in its circumstances from the case in 98 Mass., 232, and was governed in its decision by the same rule. The cases of Manville v. Telegraph Co., 37 Iowa, 220, and of Thompson v. Telegraph Co., 64 Wis., 531, were instances of the application of the same rule to similar circumstances, the difference being merely that in these the damage consisted in the loss of a sale instead of a purchase of property, which was prevented by the negligence of the defendant in the delivery of the messages. In these cases the plaintiffs were held to be entitled to recover the loses in the market value of the property occasioned, which occurred during the delay.

Of course, where the negligence of the telegraph company consists, not in delaying the transmission of the message, but in transmitting a message erroneously, so as to mislead the party to whom it is addressed, and on the faith of which he acts in the purchase or sale of property, the actual loss based upon changes in market value are clearly within the rule for estimating damages. Of this class examples are to be found in the cases of Turner v. Hawkeye Telegraph Co., 41 Iowa, 458, and Rittenhouse v. Independent Line of Telegraph, 44 N. Y., 263; but these have no application to the circumstances of the present case. Here the plaintiff did not purchase the oil ordered after the date when the message should have been delivered, and therefore was not required to pay, and did not pay, any advance upon the market price prevailing at the date of the order; neither does it appear that it was the purpose or intention of the sender of the message to purchase the oil in the expectation of profits to be derived from an immediate re-sale. If the order had been promptly delivered on the day it was sent, and had been executed on that day, it is not found that he would have re-sold the next day at the advance, nor that he could have re-sold at a profit at any subsequent day. The only damage, therefore, for which he is entitled to recover is the cost of transmitting the delayed message.

The judgment is accordingly reversed, and the cause remanded, with directions to enter a judgment for the plaintiff for that sum merely.

ATTACHING CREDITORS — CONFLICT OF JURISDICTION.

CORNELIUS GUMBEL, plaintiff in error,
v.
JOHN R. G. PITKIN, United States Marshal; KERBS & SPIESS; L. BAMBERGER & COMPANY; B. DREYFUS & COMPANY; D. W. STADEKER & COMPANY, ET AL.

Decided January 9, 1888.

1. The courts of the United States, sitting as courts of law, have equitable power over their own process, to prevent abuse, oppression and injustice; and this power may be invoked by strangers to the litigation, without regard to the citizenship of the complaining or intervening party.

2. Where under process of attachment from State court, an actual seizure of the property is prevented by the wrongful act of the U. S. Marshal, his possession cannot be made use of by a subsequent attaching creditor to defeat the execution of process previously issued from the State court.

3. The marshal and creditors for whom he acted, are estopped from taking advantage of his own wrong, whereby the sheriff was prevented from obtaining actual custody of property he made every possible effort to seize, under his prior writ of attachment.

4. Where the sheriff, proceeding to execute his writ of attachment, finds the property in possession of the marshal, he is permitted, by service of appropriate notice upon the marshal, to make a constructive levy upon the property subject to prior liens, and without disturbing the marshal's possession.

5. This constructive levy would entitle the attaching creditor in the State court to acquire a right in the property, and to appear in the proceeding in the U. S. Circuit Court to enforce it on motion to distribute the proceeds of the sale of the attached property in its custody.

In error to the Circuit Court of the United States for the eastern district of Louisiana.

CHARLES F. BUCK and GEORGE H. BRAUGHN, for plaintiff in error.

THOMAS J. SEMMES, for KERBS & SPIES ET AL., defendants in error.

J. A. GILMORE and J. C. GILMORE for Wm. Adler and C. Lasard; GEORGE DENEGRE, WALTER D. DENEGRE and THOMAS L. BAYNE, for Hoffheimer & Bro., defendants in error.

Mr. Justice MATTHEWS delivered the opinion of the court.

The grounds on which the Circuit Court proceeded in denying the relief prayed for by the intervenor, and which have been reiterated in argument at the bar, are, 1st, that no levy of the writ of attachment was in fact made by the sheriff, because he did not and could not acquire actual possession of the property sought to be seized then in the possession of the marshal, it being essential, under the laws of Louisiana, to the validity of the levy of such a writ that the officer should thereby acquire actual and exclusive possession of the property to be attached; and, 2d, that no levy by the sheriff under his writ of attachment was effected by the notice served upon the marshal as garnishee, because the marshal, as an officer of the Circuit Court of the United States, was not

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amenable to, and could not be affected by process from, a State court.

It may be remarked in the outset, that if the intervenor is entitled to any relief, the mode in which he has sought it, is appropriate. On the motion to dismiss the writ of error (113 U. S., 545) it was decided that his right to intervene by petition in this action was justified by the laws of Louisiana and by the decision of this court in Freeman v. Howe, 24 How., 450. In Krippendorf v. Hyde, 110 U. S., 276, 283, it was said: "The grounds of this procedure are the duty of the court to prevent its process from being abused to the injury of third persons, and to protect its officers and its own custody of property in their possession so as to defend and preserve its jurisdiction, for no one is allowed to question or disturb that possession except by leave of the court. So the equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustice, are inherent and equally extensive and efficient, as is also their power to protect their own jurisdiction and officers in the possession of property that is in the custody of the law. Buck v. Colbath, 3 Wall., 334; Hagan v. Lucas, 10 Peters, 400. And when, in the exercise of that power, it becomes necessary to forbid to strangers to the action the resort to the ordinary remedies of the law for the restoration of property in that situation, as happens when otherwise conflicts of jurisdiction must arise between courts of the United States and of the several States, the very circumstance appears which gives the party a title to an equitable remedy, because he is deprived of a plain and adequate remedy at law; and the question of citizenship, which might become material as an element of jurisdiction in a court of the United States when the proceeding is pending in it, is obviated by treating the intervention of the stranger to the action in his own interest as what Mr. Justice Story calls in Clarke v. Matthewson, 12 Peters, 164, 172, a dependent bill." In that case it was further stated, speaking of contests between execution or attachment creditors in the Federal courts on the one hand and strangers to the actions claiming title to the property on the other, that "if the statutes of the State contain provisions regulating trials of the right of property in such cases, it might be most convenient to make them a part of the practice of the court as contemplated by secs. 914, 915, 916 of the Revised Statutes."

In the subsequent case of Covell v. Heyman, 111 U. S., 176, it was decided that the principle that whenever property has been seized by an officer of the court, by virtue of its process, the property is to be considered as in the custody of the court and under its control for the time being, applies both to a taking by a writ of attachment under a mesne process and to a taking under a writ of execution. It was there also decided that "property thus levied on by attachment or taken in execution is brought by the writ within the scope of the jurisdiction of the court whose process it is, and as long as it remains in the possession of the officer it is in the custody of the law. It is the bare fact of that possession under claim and color of that authority, without respect to the ultimate right to be asserted otherwise and elsewhere, as already sufficiently explained, that furnishes to the officer complete immunity from the process of every other jurisdiction that attempts to dispossess him." So in Lammon v. Feusier, 111 U. S., 17, 19, it was said: "When a marshal upon a writ of attachment on mesne process takes property of a person not named in the writ, the property is in his official custody and under the control of the court, whose officer he is, and whose writ he is executing; and, according to the decisions of this court, the rightful owner cannot maintain an action of replevin against him, nor recover the property specifically in any way except in the court from which the writ issued."

It thus appears that the plaintiff in error came rightfully into the circuit court for whatever relief, either of a legal or equitable nature, that court was competent to give. It is equally true that he must depend exclusively on the circuit court for such relief as he can there obtain, for it is quite clear that the Civil District Court acquired no jurisdiction over the property under the writ of attachment held by the sheriff, nor any jurisdiction over the person of the marshal as garnishee, by virtue of the notice served upon him to answer interrogatories as such. The sheriff acquired no such possession of the property as to bring it within the custody of the State court, and the marshal was not amenable to the State court as its custodian for property which he claimed to hold officially under process from the circuit court. The circuit court alone had jurisdiction to inquire into and determine all questions relating to the property, and the rights growing out of its custody held by its own officer under color of its authority, saving, of course, all rights of action against the marshal personally for his wrongful and illegal acts resulting in injury to third persons, except such as involved the legal right to take the property out of his possession.

As we have already seen, and as has been many times declared by this court, the equitable powers of the courts of the United States, sitting as courts of law, over their own process, to prevent abuse, oppression and injustice, are inherent, and as extensive and efficient as may be required by the necessity for their exercise, and may be invoked by strangers to the litigation as incident to the jurisdiction already vested, without regard to the citizenship of the complaining and intervening party. This is the equity invoked by the plaintiff in error, which was denied to him by the circuit court.

It is certainly true, and must be conceded, as was adjudged in the court below, that Gumbel acquired under his writ of attachment no strict and technical legal standing as an attaching creditor with an actual levy on his debtor's property. There was no such actual seizure of the property by the sheriff as was necessary to constitute a levy at law. That seizure was prevented, and the attempted levy thus defeated, by the wrongful and illegal act of the marshal. That officer had taken possession of the goods on Sunday, under color of process issued the same day, illegal by the laws of the State, and as such discontinued and abandoned by the parties. The possession thus acquired was made use of for the benefit of the plaintiffs in attachment in the circuit court to defeat the

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execution of the process of the State court. It was illegal in the marshal to have taken possession of the goods under the writs in his hands issued on Sunday. It was his duty, when the sheriff appeared with a lawful writ from the State court, to surrender possession to him. His failure and refusal to do so was an actionable injury in which the present plaintiff in error, in a suitable action at law, would have been entitled to recover, both against him and against the attaching creditors for whom and at whose request he was acting, the whole amount of the loss, measured by what the plaintiff would have made if he had secured the benefit of the priority to which he would have been entitled by a first levy of his attachment upon the property. Instead of resorting to such an action, the plaintiff in error appealed to the circuit court for that equity which that court was entitled to administer by virtue of its duty to redress injuries occasioned by the abuse of its process on the part of its officers and suitors. Why should that equity not be administered in this proceeding? The court had before it all the parties, together with the property which was the subject of contention. The remedy was plain, simple and effectual. It could award to the intervenor the position in respect to the property and fund in court which, but for the injustice done him by the conduct of its officer and suitors in the abuse of its process, he would have acquired by a legal levy under his attachment. Neither the marshal nor the creditors for whose benefit he acted ought to be allowed to say that the intervenor had been deprived of the substance of his rights, because by their illegal and oppressive conduct he had been prevented from clothing it with technical forms. It is a cardinal maxim that no one shall be allowed in a court of justice to take advantage of his own wrong. No more flagrant instance of a violation of that fundamental principle can be conceived than that which is furnished by the circumstances of the present case. The very ground, and the sole ground, on which relief is denied to the plaintiff in error, is, that he has been prevented from asserting it legally by the violence and wrong of those who now deny it.

This principle has especial application in cases of proceedings by attachment. "The existence of the proceeding by attachment" (it is said in Drake on Attachment, sec. 272), "could hardly fail to give rise to fraudulent attempts to obtain preference where the property of a debtor is insufficient to satisfy all the attachments issued against him. When it transpires that there are circumstances justifying resort to this remedy, the creditors of an individual usually press forward eagerly in the race for precedence, sometimes to the neglect of important forms in their proceedings, and sometimes without due regard to the rights of others. On such occasions, too, notwithstanding the safeguards generally thrown around the use of this process, and in violation of the sanctity of the preliminary oath, it has been found that men in collision with the debtor, or counting on his absence for impunity, have attempted wrongfully to defeat the claims of honest creditors by obtaining priority of attachment on false demands. There is, therefore, a necessity —apparent to the most superficial observation— for some means by which all such attempts to overreach and defraud, through the instrumentality of legal process, may be summarily met and defeated. Hence provision has been made in the statutes of some States for this exigency; but where such is not the case, the courts have broken the fetters of artificial forms and rules, and attacked the evil with commendable spirit and effect." Accordingly, it has been held in New Hampshire, in the absence of a statute authorizing an attaching creditor to impeach the good faith of previous attachments, that on a suggestion that a prior attachment was prosecuted collusively between the plaintiff and defendant for the purpose of defrauding creditors, the court would permit a defence to be made by the creditors in the name of the defendant. Buckman v. Buckman, 4 N. H., 319; and that a subsequent attaching creditor might move to dismiss a prior attachment on the ground that there was no such person as the plaintiff therein. Kimball v. Wellington, 20 N. H., 439.

In Virginia it has been held that a junior attaching creditor may come in and defend against a senior attachment by showing that the debt for which it issued had been paid. McCluney v. Jackson, 6 Grattan, 96. In Smith v. Gettinger, 3 Ga., 140, it was decided upon general principles, and without any aid from statutory provisions, that a judgment in an attachment suit may be set aside in a court of law upon an issue, suggesting fraud and want of consideration in it, tendered by a junior attaching creditor of the common defendant. In Massachusetts provision is made for appropriate relief in such cases by statute. Lodge v. Lodge, 5 Mason, 407; Carter v. Gregory, 8 Pick., 165; Baird v. Williams, 19 Pick., 381; Swift v. Crocker, 21 Pick., 241.

The case of Paradise v. Farmers' and Merchants' Bank, 5 La. Ann., 710, is an important adjudication, having a direct bearing upon the point now under consideration. A suit in chancery was instituted in Memphis, Tennessee, by stockholders of a bank there against the bank and its president and directors, in which a receiver was appointed, an injunction obtained, and an order for the delivery of the assets of the bank to the receiver served on the president, who, during an unsuccessful attempt to enforce the process of the court, obtained possession of the assets and ran off with them to New Orleans, where they were attached in his hands by a creditor of the bank, and were claimed in the attachment suit by the receiver appointed by the court in Tennessee. The courts of Louisiana ordered the attached property to be released from the process and delivered to the receiver. The Supreme Court of the State, in its opinion, said: "The property which thus stands before us for adjudication thus appears to have been brought within the jurisdiction of this court in disobedience and in violation of the process of a court of a sister State, and in fraudulent violation of the rights of property of its real owners. It is proved that the process of the court of chancery and a writ of injunction and an order directing the delivery of the assets of the bank forthwith to the receiver were duly served on Fowlkes (the president), as well as the directors of the bank. The grounds on which it is contended the judg-

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ment of the District Court (ordering the property to be delivered to the receiver) is to be reversed are, 1st, that a receiver in chancery cannot maintain a suit without special authority from the court which appoints him; 2d, that the possession of the property attached not having been in the receiver, it is liable to the process of attachment at the instance of a *bona fide* creditor. We will not inquire into the technical question whether the authority of the chancellor is necessary to institute a suit at law; it is sufficient for us that property, in relation to which an order of a court of a sister State of competent jurisdiction has been issued, has been fraudulently or forcibly withdrawn from its jurisdiction by a party to the suit, and that the injunction issued in this case by the chancellor is still in force and binding upon the offending party. The order of the court of chancery is a sufficient authority for the intervenor (the receiver) to receive the assets of the bank; and the delivery to him will be a good delivery binding upon the bank, as well as in furtherance of justice. We have uniformly discountenanced all attempts, in whatever form they may be made, of making our courts instruments for defeating the action of courts of other States on property within their jurisdiction, by means of clandestine or forcible removal to this State. The only decree which we render in such cases is that of immediate and prompt restitution, or one preventing any rights to be acquired by these attempts to defeat the ends of justice. This is an answer to the question raised concerning the peculiar right of the creditor. The only right which he in any event could reach would be subordinate to the injunction from the operation of which this property has been attempted to be removed. Not only on general principles, but on the cases cited by the learned judge who decided this case, the claim of the plaintiff to subject this property to attachment is without the shadow of right."

The case just cited was not so flagrant as the present. The attaching creditor in that case was innocent of any participation in the wrong involved in the removal of the property from the jurisdiction of the Tennessee court. Here the attaching creditors are the very parties at whose instance and for whose benefit the wrong upon the intervenor has been perpetrated. Upon general principles, therefore, and in the exercise of its equitable power as a court of law to prevent and redress injustice committed upon a stranger by the abuse of its process on the part of its officers and suitors, the Circuit Court ought to have granted the relief to the intervenor which by its judgment it denied.

There is, however, another ground on which the same conclusion may safely rest. By section 915 of the Revised Statutes, the Circuit Court is authorized, in favor of suitors in that court, to administer the attachment laws of the State in which the court is held, and the exercise of this jurisdiction necessarily draws to itself everything properly incidental, even though it may bring into the court for the adjudication of their rights parties not otherwise subject to its jurisdiction. So that, in Krippendorf v. Hyde, 110 U. S., 276, 284, where the statute of Indiana regulating the process of attachment provided that after the institution of the suit, and before final judgment, any creditor of the defendant might file and prove his claim with the right to participate in the distribution of the proceeds of the attached property, it was said that in an action rightly instituted in the Circuit Court, in which the property of the common debtor was attached, all other creditors might appear in pursuance of the State law and share in the distribution, although citizens of the same State with the defendant, and although the amounts due them were less than the jurisdictional sum of $500.

In the case of Bates v. Days, 17 Fed. Rep., 167, decided by the Circuit Court of the United States for the Western District of Missouri, it was held, first by Judge Krekel, and affirmed by the circuit judge, McCrary, on a motion for a rehearing, that questions of priority between attaching creditors, some of whom were plaintiffs in that court and some in the State court, might be determined on proceedings for distribution of the proceeds of sale of the attached property made by the marshal, who had the actual custody by virtue of the first seizure, upon the ground that section 915 of the Revised Statutes incorporated, as a part of the practice of the courts of the United States for that district, section 447 of the Statutes of Missouri, which provided that: "Where the same property is attached in several actions, by different plaintiffs against the same defendant, the court may settle and determine all controversies which may arise between any of the plaintiffs in relation to the property, and priority, validity, good faith and effect of the different attachments, and may dissolve any attachment, partially or wholly, or postpone it to another, or make such order in the premises as right and justice may require," it being held in that State that if the writs issue from different courts of co-ordinate jurisdiction, such controversies shall be determined by that court in which the first writ of attachment was issued and levied. In the case referred to, the first attachment was issued out of the Circuit Court of the United States, the marshal having possession of the property by virtue of a seizure under that writ. The writ of attachment issued out of the State court was returned by the sheriff, stating that he had levied the same on the stock of goods of the defendant, subject to the attachment of the plaintiff, in the United States court, and that he notified the marshal of the attachment and levy, and summoned him as garnishee. In deciding the case, it was said by the district judge that: "The executive officers of courts should understand that when writs issue from State and Federal courts against the same property, the officer first obtaining possession, on being notified that a State court officer, as in this case, has a writ against the same property, all reasonable facilities should be offered such officer to make a full return, and the officer holding the property should show in his return whatever was done by such State court officer. Federal and State courts are not foreign courts, or in hostility to each other, in administering justice between litigants. The citizen of the State in the Federal court is as much in his own court as in the courts of the State. The rights he has he cannot be deprived of in a Federal court. The citizen of another State has the same claim to a

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debtor's property in the State of Missouri as a resident, but no more."

The same principle is asserted by the Supreme Court of the State of Missouri, in the case of Patterson v. Stephenson, 77 Mo., 331, as between co-ordinate State courts. It was there said: "On principle and reason, the validity of successive levies by the same officers on the same property is a recognition of the practical fact, that there may be, after a taking into custody of the law the property of the debtor, an effectual imposition of another writ without an actual caption, or a taking away of the property, or an appropriation of it for the time being, to the attaching creditor's claim. It is held in such case that the second writ in the hands of the same officer is executed by him *sub modo*, so 'it will be available to hold the surplus after satisfying the previous attachment, or the whole, if that (the first) attachment should be dissolved. In such case no overt act on the part of the officer is necessary to effect the second levy, but a return of it on the writ will be sufficient. So, where the property is in the hands of the bailee, the officer who placed it there may make another attachment, without the necessity of an actual seizure, by making return thereof, and giving notice to the bailee.' Drake on Attach., section 269. In Tomlinson v. Collins, 20 Conn., 364, it is held in such case that the second attachment is valid even without any notice to the bailee."

"Evidently the making of a second levy by the same officer is recognized because it does not disturb his custody of the property. If the rule which prevents one officer from levying on goods seized by another officer rests mainly on the prevention of conflict of jurisdiction and the interference of one officer with the prior custodianship of another, then, on the maxim, *cessante ratione legis, cessat ipsa lex*, I can see no reason for the operation or recognition of the rule, where the second levy does not produce such conflict or interference. For it must be borne in mind that the other requirement of the law, that the levying of an attachment is an actual seizure of the property, is satisfied in the case of successive levies by the same officer, by a constructive application of the succeeding writ 'to the surplus after satisfying the previous attachment.' Why, then, was not the act of the sheriff in the case now under consideration, in taking the invoice of the goods in connection with the constable, 'available to hold the surplus after satisfying the previous attachment,' made by the constable? The constable had the requisite notice. It in nowise interfered with the prior custody. It produced no conflict, and would lead to no confusion."

Upon this reasoning it is contended, on behalf of the plaintiff in error, that he was entitled to the benefit of section 1942 of the Revised Statutes of 1870 of Louisiana, which provides that: "Whenever a conflict of privileges arises between creditors, all the suits and claims shall be transferred to the court by whose mandate the property was first seized, either on mesne process or on execution, and the said court shall proceed to class the privileges and mortgages according to their rank and privilege, in a summary manner, after notifying the parties interested."

There are difficulties in the literal application of such a statutory provision, intended, of course, to regulate the practice between themselves of co-ordinate State courts, to cases of conflicting rights arising between suitors in the Federal and State courts where the systems are independent. It is impossible to transfer suits pending in the State courts into the circuit courts of the United States, except as provided by Act of Congress for the removal of such causes. Nevertheless, the substance of the provision may be applied to the practice of the courts in attachment proceedings in such a way as to promote and secure that comity which ought to prevail between Federal and State tribunals exercising concurrent jurisdiction, and to administer justice in a conflict of rights growing out of their independent action. Where, under a writ of attachment, the marshal of the United States has first seized property and taken it into custody, the exclusive jurisdiction of the circuit court is established over it and over all questions concerning it; but it ought not to follow that the property is thereby withdrawn from the assertion and enforcement of claims against it by those who must necessarily pursue their remedy in the first instance in a State court. A creditor residing in the same State with the defendant and, therefore, required to institute proceedings in the State tribunal, ought to be enabled, by his writ of attachment, to subject the property of the debtor in due course, and according to the order of priority, even though when the sheriff proceeds to execute the writ he finds that property in the possession of the marshal of the United States, and, therefore, subject to the jurisdiction of the Federal court. In that case no rule of law or of convenience is violated if he is permitted, by service of notice upon the marshal, to make a constructive levy upon the property, subject to all prior liens, and without disturbing the marshal's possession. This, of course, would not have the effect of subjecting the marshal personally or officially to answer as garnishee to the State court as custodian of the property for the purposes of its jurisdiction, but would entitle the attaching creditor in the State court to acquire a right in the property and to appear in the proceeding in the circuit court to enforce it on a motion to distribute the proceeds of the sale of the attached property in its custody. This is the recognized practice in those States where successive attachments are authorized to be served by the same officer, acting as the executive of different courts, or by different officers, each acting independently of the other. There seems to be no reason why a similar practice should not be adopted as between Federal and State tribunals, acting concurrently in the administration of the same laws. Indeed, every consideration of justice and convenience might be adduced to support it. And such a practice in the courts of the United States, when authorized by law in the administration of attachment proceedings as between State courts, seems to us to be justified as a reasonable implication from section 915 of the Revised Statutes. That section expressly secures to plaintiffs in common law causes in circuit and district courts of the United States similar remedies by attachment against the property of the defendant to

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those provided by laws of the State in which such court is held for the courts thereof, and authorizes the courts of the United States, by general rules, to adopt from time to time such State laws as may be in force in the States where they are held in relation to the same subject. The remedies here spoken of, of course, are to be understood as they are defined in the State laws, and subject to the same conditions and limitations. The authority thus conferred is ample to authorize and sanction the practice of permitting the constructive levy by attaching creditors under State process upon the property in possession of the marshal and their intervention in proceedings in the circuit court of the United States for the same district where, as between State courts of concurrent jurisdiction, a similar method of acquiring and adjusting conflicting rights is prescribed.

Under such a practice, if in the present case the marshal had acquired and held possession of the attached goods, by virtue of a valid writ first levied, the plaintiff in error, by making his constructive levy, subject to the prior right and possession of the marshal, by giving him the appropriate notice of his claim to hold him as a garnishee in possession of the property for his benefit as to any surplus that might remain after payment of prior claims, would have thereby acquired the right, after establishing his claim by judgment in the State court and presenting proper proof thereof, to appear in the Circuit Court as an intervenor and secure his right to share in the proceeds of the sale of the attached property in his proper order.

But the case, as actually presented upon the circumstances disclosed in this record, is much stronger for such an intervention. When the sheriff of the Civil District Court undertook to levy upon the goods in question, and served the marshal with notice as garnishee holding actual possession of the property, the latter was in fact, as we have already seen, in possession illegally under a writ, which protected his official possession only so far as to prevent the property from being forcibly withdrawn from the jurisdiction of the Circuit Court by judicial process, that court having acquired jurisdiction by virtue of the seizure under color of its authority, to decide all questions concerning it. That writ, though illegally issued and levied, was not void on its face. In a certain sense, therefore, the property was *in custodia legis*, and not subject to a levy under process which would have the effect of taking it out of his possession and control. But when, in the exercise of jurisdiction by the Circuit Court in the determination of the question raised by the petition of intervention, the nature of the marshal's title and possession came to be inquired into, it was made apparent that he held the property illegally as a trespasser, and in that forum could be treated as holding it in a private and not an official capacity. It was subject, therefore, in the view of that court, to the consequences of the notice served upon the marshal as garnishee. It was held by the marshal as if it had been a surplus arising from the sale of the property of a defendant on execution, which, as is well established, may be attached in his hands. Drake on Attachment, sec. 251.

The case, therefore, stands thus: For the reasons growing out of the peculiar relation between Federal and State courts exercising coordinate jurisdiction over the same territory, the Circuit Court acquired the exclusive jurisdiction to dispose of the property brought into its custody under color of its authority, although by illegal means, and to decide all questions of conflicting right thereto; the plaintiff in error having pursued his remedy by action against his debtor in the State court, to which alone by reason of citizenship he could resort, attempted the levy of his writ of attachment upon the goods in the possession of the marshal; not being allowed to withdraw from the marshal the actual possession of the property sought to be attached, he served upon the marshal notice of his writ as garnishee; not being able by this process to subject the marshal to answer personally to the State court, he made himself a party to the proceedings in the Circuit Court by its leave, and proceeded in that tribunal against its officer and the creditors for whom he had acted; on a regular trial it appeared as a fact that at the time of the notice the marshal was in possession of the property wrongfully as an officer, and therefore chargeable as an individual. It was competent for the Circuit Court, and having the power it was its duty, to hold the marshal liable as garnishee, and having in its custody the fund arising from the sale of the property, and all the parties interested in it before it, that court was bound to do complete justice between all the parties on the footing of these rights, and give to the plaintiff in error the priority over all other creditors, to which by virtue of his proceedings, and as prayed for in his petition of intervention, he was entitled.

On these grounds, the judgment of the Circuit Court is reversed, and the cause remanded with directions, upon the facts found in the Circuit Court, to award judgment in favor of the intervenor, Gumbel, in conformity with this opinion; and it is so ordered.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

BLACK AND WOTRING
v.
SEBASTIAN AMAN.

EQUITY. No. 10,003.

Decided October 17, 1887.
The CHIEF JUSTICE and Justices HAGNER, JAMES and MERRICK sitting.

1. A clearly substantial compliance with the statutes providing for the acknowledgment of deeds is sufficient; a literal compliance is not required.
2. But there is not such a substantial compliance when it is seriously doubtful whether it can be correctly inferred from the defective acknowledgment that the grantors in the deed were known personally or by proof to the officer taking the acknowledgment; or that the deed was fully explained to the wife upon her separate examination; or that she there "declared that she had willingly signed, sealed and delivered the same, and that she wished

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rot to retract it," when the statute (R. S. D. C., secs. 442–451) requires these facts to appear from the acknowledgment.

3. When a vendor seeks specific performance of a contract for the sale of realty, equity will not compel an unwilling vendee to take a doubtful title.

APPEAL by complainants from a decree of Special Term, dismissing a bill in equity by vendors seeking specific performance of a contract for the purchase of real estate.

EDWARDS & BARNARD for complainant.

HAGNER & MADDOX for defendant.

Mr. Chief Justice BINGHAM delivered the opinion of the court.

This is a bill to enforce the specific performance of a contract for the purchase of certain real estate in the District of Columbia, exhibited by the complainants, who were the vendors.

On or about February 22, 1865, Israel Dille and his wife, Sophronia, acquired the property as joint tenants in fee simple, by conveyance of that date, and by their deed of June 13, 1867, conveyed the same to E. R. Tuller and his heirs, in trust:

1. For the use, benefit and behoof of the grantors, the said Israel and Sophronia, during their joint lives; 2, on the death of either of said grantors, for the use and benefit of the survivor as a life estate; and 3, upon the decease of both, for the complainants, Mrs. Black and Mrs. Wotring (both *nee* Dille), their heirs and assigns.

Sophronia survived her husband, and both were dead at the time of the sale by the complainants to the defendant Aman.

At the date of the deed to Tuller, and of the execution thereof, and at the time of her death, Sophronia had no children or descendants.

The complainants, Mrs. Black and Mrs. Wotring, are the only children of Israel Dille, by a former marriage; and they are the same persons mentioned in the deed of conveyance from their father and his wife, Sophronia, to Tuller, *and through that conveyance they claim title.*

The said Israel Dille left no other children surviving him, and he had no other children or descendants at the date of the deed to Tuller.

The property was sold to the defendant *on the assurance and condition that the complainants had a good title.*

The defence is, that the complainants had not, at the time of sale, and have not now, a good title to said lot, because of the defective acknowledgment of the deed from Mr. and Mrs. Dille to Tuller, trustee, and *which is the only objection made by the defendant to complainants' title to the property.*

The deed of Dille and wife to Tuller is signed and sealed by the grantors in the presence of Seth Hillman and N. Callan.

The certificate of acknowledgment and authentication attached to this deed is as follows:

"District of Columbia, } *ss:*
Washington City. }

Before me, a notary public, in and for said District, personally appeared Israel Dille, and Sophronia, his wife, and acknowledged that they severally signed and sealed the foregoing deed for the uses and purposes therein specified, she, the said Sophronia, being by me examined separate and apart from her husband, acknowledged that she signed and sealed the same for the uses and purposes aforesaid, and doth now acknowledge the same. Witness, etc.

13th day June, 1867. N. CALLAN,
(Notarial Seal.) Notary Public."

Sections 442, 450 and 451, R. S. D. C., providing for the acknowledgment of a deed, including one of this character, are as follows:

"Sec. 442. The officer taking an acknowledgment shall annex to the deed a certificate, under his hand and seal, to the following effect:

"County (or city, etc.), to wit:

I, A. B., a justice of the peace (or other prescribed officer, giving his title), in and for the county (or city, or parish, or district) aforesaid, in the State (or territory, or district, of ——), do hereby certify that C. D., a party (or C. D. and E. F., etc., parties), to a certain deed, bearing date on the —— day of ——, and hereto annexed, personally appeared before me in the county (or city, etc.,) aforesaid, the said C. D. (or C. D. and E. F., etc.), being personally well known to me as (or proved by the oaths of creditable witnesses before me to be) the person (or persons) who executed the said deed, and acknowledged the same to be his (her or their) act and deed. Given under my hand and seal this —— day of ——. A. B. (Seal.)"

"Sec. 450. When any married woman shall be a party executing a deed for the conveyance of real estate or interest therein, and shall only be relinquishing her right of dower, or when she shall be a party with her husband to any deed, it shall be the duty of the officer authorized to take acknowledgments, before whom she may appear, to examine her privily and apart from her husband, and to explain to her the deed fully.

"Sec. 451. If, upon such privy examination and explanation, she shall acknowledge the deed to be her act and deed, and shall declare that she had willingly signed, sealed and delivered the same, and that she wished not to retract it, the officer shall certify such examination, acknowledgment and declaration by a certificate annexed to the deed, and under his hand and seal, to the following effect:

"County (or city, etc.), to wit:

I, A. B., a justice of the peace (or other prescribed officer, giving title), in the county (or city, etc.), aforesaid, in the State (or territory, etc.), of ——, do hereby certify that C. D., the wife of E. F., party to a certain deed, bearing date on the —— day of ——, and hereunto annexed, personally appeared before me in the county (or city, etc.), aforesaid, the said C. D. being well known to me as (or proved by the oaths of credible witnesses before me to be) the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said E. F., acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under my hand and seal the —— day of ——. A. B. (Seal.)"

Complainants claim that the certificate to the deed in question is substantially the same as the form prescribed by Congress. If it be clearly so, there can be no doubt of its sufficiency. A

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substantial, not a literal, compliance is required. Carpenter v. Dexter, 75 U. S., 8 Wall., 526; Kelly v. Calhoun, 95 U. S., 713; Deery v. Cray, 72 U. S., 5 Wall., 795; Dundas v. Hitchcock, 58 U. S., 12 How., 269.

But the defendant claims that the acknowledgment in controversy is defective in that it does not state: 1, where Israel and Sophronia appeared; 2, that they were parties grantor in the deed; 3, that they were personally known to be such; 4, that the wife was examined privily; 5, that the deed was explained to the wife; 6, that the wife declared that she had willingly signed, sealed and *delivered* the deed, and *that she wished not to retract it.*

After a careful comparison of the certificate to the Tuller deed, with the form prescribed by statute, we are inclined seriously to doubt whether it can be correctly inferred, from any language used in the former, that Israel and Sophronia Dille were known personally or by proof to be the grantors in the deed, that the deed was fully explained to Sophronia upon her separate examination, or, that she then "declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it."

The cases cited by complainants' counsel were generally in ejectment where the parties in interest were before the court, and when the adjudication would set at rest all questions as to the title. In such a case the court may safely resolve the doubt in favor of the validity of the title, if in its judgment it should be so decided. But the rule is different when a vendor seeks specific performance of a contract for the sale of realty. Courts of equity will not compel an unwilling vendee to take a doubtful title. In this case the heirs of Sophronia Dille who would be entitled to this property (if the deed to Tuller should be adjudged insufficient) are not parties, and would not be affected by our decree.

We think it may fairly be said that the title of the defendant, were we to enter a decree for specific performance, would, under the circumstances be doubtful; and we are, therefore, constrained to dismiss the bill, with costs.

Pigg's Pig—A Kentucky Indictment.

The following is a true copy of an indictment found by the grand jury of Lawrence county, Ky., at its October term of the Criminal Court (leaving off the name of the defendant and date):

LAWRENCE CRIMINAL COURT.

Commomwealth of Kentucky against ———, Defendant. } Indictment.

The grand jury of Lawrence county, in the name and by the authority of the Commonwealth of Kentucky, accuse ——— of the offence of malicious mischief, committed as follows:

The said ———, on the 10th day of September, A. D., 18—, in the county and circuit aforesaid, did unlawfully, wilfully, and maliciously kill and destroy one pig, the personal property of George Pigg, without the consent of said Pigg, the said pig being of value to the aforesaid George Pigg. The pig thus killed weighed about twenty-five pounds, and was a mate to some other pigs that were owned by said George Pigg, which left George Pigg a pig less than he (said Pigg) had of pigs, and thus ruthlessly tore said pig from the society of George Pigg's other pigs, against the peace and dignity of the Commonwealth of Kentucky.

A. S. AUXIER, Commonwealth's Attorney.

A true bill: O. D. BOTNER, Foreman.

Filed Nov. ——, A.D., 18—. G. F. JOHNSON, Clerk.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

January 30.

10991. Millard Metzgar et al. v. Ella A. Pumphrey et al. To sell lot. Com. sol., F. T. Browning.

10992. ——— Mackey v. Thomas J. Mackey. Com. sol., J. J. Darlington.

10993. Same v. Same. Com. sol., Same.

January 31.

10994. Wm. H. Main et al. v. Daniel E. Hoadley. For injunction and receiver. Com. sols., Cook and Worthington.

February 3.

10995. Isaac P. Childs et al. v. Sophronia Boswell. Judgment creditor's bill. Com. sols., Garnett and Mackall.

10996. Mary E. Pfiel v. John K. Pfiel. For divorce. Com. sol., W. Tayloe Snyder.

10997. Millard Metzgar et al. v. J. Winfield Scott et al. Com. sol., F. T. Browning.

February 4.

10998. Chester Goodrich v. Nathan Sprague. To cancel note and deed of trust. Com. sol., C. Storrs.

February 6.

10999. Lucretia Myers et al. v. John J. Lindsley et al. For partition. Com. sols., Gordon & Gordon.

CIRCUIT COURT.—New Suits at Law.

January 30.

28421. Julius Viedt v. The Evening Star Newspaper Co. Damages, $20,000. Piffs atty, J. G. Bigelow.

28422. Columbus C. Isaacs et al. v. John W. Wheeller. Notes and acc't, $654.40. Piffs atty, J. J. Darlington.

28423. John H. Chatterton et al. v. John J. Unsworth. Account, $103.15. Piffs attys, Garnett and Mackall.

February 1.

28424. Columbus Alexander v. John Pfleging. Acc't rent, $300. Piffs atty, F. E. Alexander.

February 2.

28425. Dennis Connell v. Jeremiah Collins. Judgment of Justice O'Neal. $64.53. Piffs atty, N. T. Murray.

28426. The U. S. ex rel. John D. Manion v. Wm. B. Webb et al. Mandamus. Piffs attys, Davidge and Garnett.

February 3.

28427. George Pfitiger v. John F. Talbury et al. Note, $300. Piffs atty, B. F. Leighton.

28428. Charles Schneider v. Edw. W. Koch et al. Notes, $720. Piffs attys, Garnett and Mackall.

28429. Christian Kieny v. Luther M. Cornwall. Notes and acc't, $488. Piffs attys, Edwards & Barnard.

28430. Moses Kemper et al. v. Christopher F. Zeirman et al. Note, $150. Piffs atty, L. Tobriner.

28431. Henry P. Gilbert v. Thomas P. Morgan, jr., et al. Notes, $4,950. Piffs atty, F. W. Jones.

February 4.

28432. Basil B. Earnshaw et al. v. George N. Stuart. Acc't, $321.22. Piffs atty, F. T. Browning.

28433. Gandanzio Riani v. The Waltham Watch Club Co. Certiorari. Defts atty, P. B. Stilson.

28434. Robinson W. Cator et al. v. Earnest D. Mayer et al. Acc't, $484.49. Piffs atty, R. R. Perry.

28435. Charles M. Bell et al. v. Robert L. Downing. Acc't, $140. Piffs attys, Edwards & Barnard.

PROBATE COURT.—Justice Cox.

February 3.

Estate Thos. L. Riggs. Letters granted E. Francis Riggs.

Estate Zach. Waters. Thos. Hopkins appointed adm'r; bond, $180.

Estate Charles Rau. Thos. Wilson ordered to erect a tombstone at a cost of $100.

Estate Wm. E. Costin. Letters testamentary granted Lucy M. Costin; bond, $500.

Estate Obedia Kimmell. Will returned with commission executed.

Estate Marie L. Walker. Letters granted Benj. F. Leighton and Frank L. Summy; bond, $2,000.

Estate Wm. Purcell. John J. Purcell appointed adm'r; bond, $2,000.

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Estate Stephen Mirick. Emily M. Farless appointed adm'r d. b. n. c. t. a.; bond, $50.

Estate Wm. O'Neal. Letters granted Annie J. O'Neal; bond, $100.

Estate Maria Berry. Allowance of services of attorney.

Estate Agnes M. Smith. Letters granted Blair Lee; bond, $14,000.

March 2, 1888, appointed for the final settlement of the estates of Ellen Owen, Harriett Shekell and Sarah Hudders; and May 4, for those of Maria S. and Sarah M. Thomson.

Mary J. Rider appointed guardian to Emma A. and Edward E. Rider.

Georgia D. Todd appointed guardian to Sallie D. and Georgiana Todd; bond, $8,000.

Mary O'Hagan appointed guardian to Annie and Oswald O'Hagan; bond, $5,000.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of February, 1888.

Daniel McLaughlin
v.
Peter McIntire et al. } No. 10,871. Equity Docket 27.

On motion of the plaintiff, by Mr. Frank T. Browning, his solicitor, it is ordered that the defendant, John W Lumsden, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to wind up the affairs of the Twelfth Building Association of Georgetown, D. C., and for the appointment of a receiver.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
6 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Lord, for the use of
W. W. Kirby,
v.
Patrick O'Donnoghue et al. } No. 8,429. Equity.

L. Cabel Williamson, trustee herein, having reported the sale of sub-lot 33, in square 749, to Michael Horan, for $444, and the sale of sub-lots 34 ond 35, in square 749, to Rudolph Goldschmid, for $816. *ffs*; and also the sale of sub-lots 38, 39, 40 and 41, to Rudolph Godschmid, for $1,496, all of said lots being in Patrick O'Donnoghue's subdivision of said square 749, in the city of Washington and District of Columbia, it is, this 7th day of February, 1888, by the Court ordered, that said sales be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 12th day of March, 1888.

Provided a copy of this order be published in "The Washington Law Reporter." once a week for three successive weeks before to the said 12th day of March, 1888.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
6 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3d, 1888.

In the case of William J. Miller, Executor of Ellen Owen, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 2d day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test: DORSEY CLAGETT, Registor of Wills.
No. 2801. Ad. D. 13. Carusi & Miller, Proctors.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Peter Parker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1888.
6 HARRIET W. PARKER, Ex'x,
No. 2 Lafayette Square.
No. 2968. Ad. D. 13. H. R. Webb, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration c. t. a. on the personal estate of Warren Waugh, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of January, 1888.
6 SUSAN E. MURRAY, Adm'x c. t. a., 513 2d st. n. w.
No. 2849. Ad. D. 13. C. A. Elliot, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3rd, 1888.

In the case of Mary H. J. Bush and Willard Saulsbury, jr., Administrators d. b. n. c. t. a. of Sarah M. Thomson, dec'd, the Administrators d. b. n. c. t. a. aforesaid have, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrators d. b. n. c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test. DORSEY CLAGETT, Register of Wills.
No. 424. Ad. D. 8.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3rd, 1888.

In the case of Mary H. J. Bush and Willard Saulsbury, jr., Executors of Maria S Thomson, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter prevoius to the said day.

6 Test. DORSEY CLAGETT, Register of Wills.
No. 2722. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Marie L. Walker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 3d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 3d day of February, 1888.
6 BENJAMIN F. LEIGHTON, } Executors.
FRANK L. SUMMY, }
No. 2974. Ad. D. 13. B. F. Leighton, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3d, 1888.

In the case of Eugene A. Shekell and Abraham B. Shekell, Executors of **Harriett Shekell**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 2d day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test: DORSEY CLAGETT, Register of Wills.

No. 2471. Ad. D. 12. Chas. M. Matthews, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Richard H. Brooks v. **Wm. Henry Freeman et al.** } Equity. No. 10,832.

Upon consideration of the reports of James H. Smith, trustee, filed herein on the 10th and 30th days of December, A. D. 1887, of the sale of the real estate described in the proceedings in this cause, it is, this 1st day of February, A. D 1888, ordered that said reports stand ratified and confirmed, unless cause thereof to the contrary be shown on or before the 3d day of March, A. D. 1888.

Provided a copy of this order is published in the Law Reporter once a week for three successive weeks.

* * * * * * * * * * * *

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

6 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of February, 1888.

Thomas McGill, Amanda A. Witherow et al. v. **Hugh Cameron.** } No. 10,918. Docket 27. Equity.

On motion of the plaintiffs, by Messrs. Edwards & Barnard, their solicitors, it is ordered that the defendant, **Hugh Cameron**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to perfect the title of complainants to the west twenty-five (25) feet front, of lot number two (2), in square thirty-three (33), in Washington city, D. C.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

6 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of S. **Augustine Burr**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of February, 1888.

6 LOUISE A. BURR, Ex'x, 1308 H st. n. w.

Randolph Coyle, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3d, 1888.

In the case of Edward A. Newman, Executor of **Sarah Hudders**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the second day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test: DORSEY CLAGETT, Register of Wills.

No. 2422.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of January, 1888.

D. Appleton & Co. v. **Eufemio Abadiano.** } No. 23,301. At Law.

On motion of the plaintiffs, by Mr. Maddox, their attorney, it is ordered that the defendant, **Eufemio Abadiano**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the goods and chattels of defendant, attached by the Marshal in the hands of S. P. Langley, Secretary of the Smithsonian Institution, December 10, 1887, to the satisfaction of a claim of the plaintiff's for $1,217.90, with interest and costs, as claimed in the above-entitled cause.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

3 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of January, 1888.

Jennie A. Smith v. **Edward A. Smith.** } Equity. No. 10,824.

And now, to-wit, January 13th, 1888, on motion of the plaintiff, by William A. Cook, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

And that notice hereof be published once a week for three successive weeks in the Washington Law Reporter and the National Republican.

The object of this suit is to obtain a divorce on the ground of non-support and desertion.

By the Court. WM. M. MERRICK, A. J.

True copy. Test: R. J. MEIGS, Clerk, &c.

3 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 25th day of January, 1888.

Caroline Green et al., Complainants, v. **George W. Snow et al.,** Defendants. } Equity. No. 9,674.

On motion of the complainants, by C. G. Berryman, their solicitor, it is ordered that the defendants, **Martha Carroll, Dennis Anderson, Rebecca Snow, John T. Snow, Daniel B. Snow and Virginia Snow**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a sale for the purpose of partition of the east half of lot numbered four (4) in square numbered five hundred and thirty-eight (538), in the city of Washington, D. C., as will more fully appear by the bill of complaint in this cause filed.

By the Court. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

4 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21th day of January, 1888.

Henry Strong v. **Wm. Pitt Shearman et al.** } No. 10,768. Eq. Docket 27.

On motion of the plaintiff, by Mr. Ferdinand Schmidt, his solicitor, it is ordered that the defendants, **Mary W. Shearman, Henry S. Shearman, William Pitt Shearman, and Lawrence H. Shearman**, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks, before said rule-day, in the Washington Law Reporter.

The object of this suit is to remove a cloud from the title to the twelve inches of original lot 13, in square 290, immediately next to the east 32 feet 6 inches of said lot, by a depth of 78 feet 6 inches.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: R. J. MEIGS, Clerk, &c.

5 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business,

January 20th, 1888.

In the matter of the Estate of **Bernard Overman**, deceased.

Application for Letters of Administration on the estate of the said deceased, has this day been made by his widow, Elizabeth Overman.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of February, 1888, next, at 11 o'clock a. m., to show cause why said Letters should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, A. J.

4 Test: DORSEY CLAGETT, Register of Wills.

W. B. Edmonston, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 20th, 1888.

In the matter of the Estate of **Obediah Kimmell**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Joseph Gawler,

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of February, 1888, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.

4 Test: DORSEY CLAGETT, Register of Wills.

No. 2942. Ad. D. 13. N. H. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 20th, 1888.

In the matter of the Estate of **Richard Byron**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Eliza Byron.

All persons interested are hereby notified to appear in this Court on Friday the 10th day of February next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.

4 Test: DORSEY CLAGETT, Register of Wills.

No. 2946. Ad. D. 13. S. C. Mills, Proctor.

THIS IS TO GIVE NOTICE,

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth D. Lowry**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate,

Given under our hands this 13th day of January, 1888.

4 WILLIAM L. DUNLOP, } Executors.
WILLIAM LAIRD, Jr. }

No. 2957. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Henry A. Merrick**, late of the District of Colmbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of January, 1888.

4 ERNEST M. MERRICK, Adm'r c. t. a.,
416 Spruce st., Le Droit Park.

No. 2955. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of January, 1888.

Lewis Cook
v. } No. 10,303. Equity Docket 26.
Frank Waters et al.

On motion of the plaintiff, by Mr. H. B. Moulton, his solicitor, it is ordered that the defendants, **James Brooks** and **John Brooks** cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to set aside two alleged deeds of trust as fraudulent, purporting to convey the land and premises known as the west half of lot numbered 39, in Hopkins' recorded subdivision of square 110, in the city of Washington, D. C. And also, for the appointment of a trustee to sell and convey the said property, and for a distribution of the proceeds thereof among the heirs-at-law of James Washington, deceased.

By the Court. WM. M. MERRICK, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

4 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business,

January 20th, 1888.

In the case of Eliza Ann Brooks, Administratrix of **Joseph Brooks**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 24th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

4 Test. DORSEY CLAGETT, Register of Wills.

No. 2556. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Francis C. Goode**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of January, 1888.

5 G. BROWN GOODE, Ex'r,
Smithsonian Institute.

No. 2938. Ad. D.13. W. K. Duhamel, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard James Blakelock**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of January, 1888.

4 CATHARINE E. BLAKELOCK,
Adm'x c. t. a., 619 6th st. s. w.

No. 2962. Ad D. 13. Wm. Twombly, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rosina M. Kleiber**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of January, 1888.

4 M. D. PECK, Ex'r, 934 F st. n. w.

No. 2931. Ad. D. 13.

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Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Anna E. Sleator**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of January, 1888.

4 AUGUSTA C. G. S. HAYCOCK,
Adm'x c. t. a., 1832 19th st.

No. 2901. Ad. D. 13. Wm. G. Johnson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 26th, 1888.

In the case of Martin F. Morris, Administrator of **Hannah Maria Ludlow**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 17th day of February, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

5 Test: DORSEY CLAGETT, Register of Wills.

No. 2602. Ad. D. 13.

IN THE SUPREME COURT OF THE D'STRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 27th, 1888.

In the case of R. Ross Perry, Executor of **Harriet McCeney**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 24th day of February, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

5 Test. DORSEY CLAGETT, Register of Wills.

No. 2591. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal Estate of **Ellen J. Griswold**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of January, 1888.

5 JOHN RIDOUT, Ex'r, 470 La. ave.

No. 2961. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 13th, 1888.

In the case of George A. Smith, Administrator of **David Smith**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 3rd day of February, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

3 Test: DORSEY CLAGETT, Register of Wills.

No. 2584. Ad. D. 13. WM. TWOMBLEY, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 27th, 1888.

In the matter of the Estate of **Mary S. Norman**, late of the District of Columbia, deceased.

Application for the Probate of the Codicil or modification of the last Will and Testament of the said deceased, has this day been made by Isaac F. Norman.

All persons interested are hereby notified to appear in this Court on Friday the 24th day of February next, at 11 o'clock a. m., to show cause why the Codicil or modification of the said Will should not be proved and admitted to Probate as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

5 Test: DORSEY CLAGETT, Register of Wills.

No. 2951. Ad. D. 13. Hildebrant & Morrison,
1331 F st. n. w., Washington, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

January 27th, 1888.

In the matter of the Estate of **Lorenzo Dow Merchant**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary C. Merchant.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of Febuary next, at one o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

5 Test: DORSEY CLAGETT, Register of Wills.

Riddle, Davis & Padgett, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Anna Walsh**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of January, 1888.

5 JOHN T. SMITH, U. S. Navy,
Adm'r, 1128 6th st. n. w.

Thos. F. Miller, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William H. King**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of January, 1888.

5 GEORGE S. KING, Adm'r, Anacostia, D. C.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Elisha Goddard**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers there of, to the subscribers, on or before the 19th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of January, 1888.

5 OTIS F. PRESBREY, Adm'r c. t. a.,
Public Opinion Office, cor. 9th & Pa. ave.

No. 2960. Ad. D. 13. John Ridout, Proctor.

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ESTABLISHED 1874.
WM. STONE ABERT, - - - - - Editor
VOL. XVI. - - - - - - - No. 7
WASHINGTON, D. C. - - - FEBRUARY 15, 1888

The Chinese Immigration Case.

The Supreme Court of the United States, on Monday last, affirmed the decision of the lower court in the Chinese Immigration Case, of the United States against Jung Ah Lung, on appeal from the decision of the Circuit Court of the United States for the District of California.

The Hon. Ogden Hoffman, U. S. District Judge, discharged Jung Ah Lung from custody on a writ of *habeas corpus*. In the petition for the writ, it was alleged that Jung Ah Lung was unlawfully restrained of his liberty by E. C. Reed, master of the steamship San Pablo, in the port of San Francisco, who refused to permit him to land, because of the failure of Jung Ah Lung to produce his custom house certificate of identification, entitling him to re-enter the United States in accordance with the requirements, of the Act of Congress entitled "An Act to execute treaty stipulations relating to Chinese," approved May 6, 1882.

Jung Ah Lung kept a laundry in New York city, and was a resident of the United States continuously from November, 1880, until about the 24th of October, 1883, when he sailed for China on the steamer Rio de Janeiro. Before sailing, he procured from the collector of customs of San Francisco the proper certificate of identification, stating his name, age, occupation, last place of residence, physical marks, &c.

During the month of June, 1885, while on a voyage to the city of Canton, China, the junk upon which he was a passenger was attacked by pirates, who deprived Jung Ah Lung of his certificate.

On the trial of the *habeas corpus* case it fully appeared from the evidence, that Jung Ah Lung was the person who had received the certificate which remained uncancelled on the books of the custom house. It was, however, contended on the part of the District Attorney, that the applicant should be remanded to custody solely on the ground that the testimony offered could not under the provisions of the Acts of Congress, known as the Restriction Acts, be received in evidence.

On the part of the Chinaman it was contended that while the act entitles the Chinese laborer to whom the certificate is issued, to return to and re-enter the United States upon producing and delivering the same to the collector of customs, yet if he is unfortunate enough to lose the certificate, he should be permitted to return and prove his right to re-enter by the original register, of which the certificate is merely a copy.

The loss of the certificate was proved by competent testimony, also the identity of the passenger, and it was shown that no one had been produced or been landed on the certificate.

The opinion of the Supreme Court was rendered by Justice Blatchford; dissenting, Justices, Harlan, Field and Lamar.

SUPREME COURT OF THE UNITED STATES.

REPORTED BY WM. STONE ABERT.

HABEAS CORPUS—INTERSTATE COMMERCE.

JOSEPH J. SMITH, Plaintiff in Error,
v.
THE STATE OF ALABAMA.

Decided January 30, 1888.

1. The statute of Alabama requiring locomotive engineers in that State to be examined and licensed, by a board appointed by the Governor for that purpose, is valid; and is not a regulation of Interstate Commerce or in conflict with that clause of the Constitution of the United States, which confers upon Congress power to regulate commerce among the States.

2. The power vested in Congress to regulate commerce is not only paramount but exclusive, so as to withdraw the subject of such legislation altogether from the States.

3. State legislation may affect foreign or interstate commerce and yet be permissive, when not in conflict with the regulation of the same subject by Congress.

4. General legislation of a State, prescribing the liabilities or duties of citizens of a State, without distinction as to pursuit or calling, is not objectionable because it may affect persons engaged in foreign or Interstate Commerce.

In error to the Supreme Court of the State of Alabama.

E. L. RUSSELL, B. B. BOONE and E. M. WATSON, for plaintiff in error.

T. N. MCCLELLAN, Attorney-General, for defendant in error.

STATEMENT.

This is a writ of error bringing into review a judgment of the Supreme Court of the State of Alabama, affirming a judgment of the City Court of Mobile. The proceeding in the latter court was upon a writ of *habeas corpus* sued out by the plaintiff in error, seeking his discharge from the custody of the sheriff of Mobile County, in that State, under a commitment by a justice of the peace upon the charge of handling, engineering, driving, and operating an engine pulling a passenger train upon the Mobile and Ohio Railroad used in transporting passengers within the County of Mobile, and State of

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Alabama, without having obtained a license from the board of examiners appointed by the governor of said State, in accordance with the provisions of an act entitled "An act to require locomotive engineers in this State to be examined and licensed by a board to be appointed by the governor for that purpose," approved February 28, 1887, and after more than three months had elapsed from the date of appointment and qualification of said board. The plaintiff in error, upon complaint, was committed by the examining magistrate to the custody of the sheriff to answer an indictment for that alleged offence. The ground of the application for discharge upon the writ of *habeas corpus* in the City Court of Mobile was, that the Act of the General Assembly of the State of Alabama, for the violation of which he was held, was in contravention of that clause of the Constitution of the United States which confers upon Congress power to regulate commerce among the States.

Mr. Justice MATTHEWS delivered the opinion of the court.

The grant of power to Congress in the Constitution to regulate commerce with foreign nations and among the several States, it is conceded, is paramount over all legislative powers which, in consequence of not having been granted to Congress, are reserved to the States. It follows that any legislation of a State, although in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of Congress over the subject of commerce, must give way before the supremacy of the national authority. As the regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, it cannot always be said that the power to regulate is dormant because not affirmatively exercised. And when it is manifest that Congress intends to leave that commerce, which is subject to its jurisdiction, free and unfettered by any positive regulations, such intention would be contravened by State laws operating as regulations of commerce as much as though these had been expressly forbidden. In such cases, the existence of the power to regulate commerce in Congress has been construed to be not only paramount but exclusive, so as to withdraw the subject as the basis of legislation altogether from the States.

There are many cases, however, where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations. If their operation and application in such cases regulate such commerce, so as to conflict with the regulation of the same subject by Congress, either as expressed in positive laws or implied from the absence of legislation, such legislation on the part of the State, to the extent of that conflict, must be regarded as annulled. To draw the line of interference between the two fields of jurisdiction, and to define and declare the instances of unconstitutional encroachment, is a judicial question often of much difficulty, the solution of which, perhaps, is not to be found in any single and exact rule of decision. Some general lines of discrimination, however, have been drawn in varied and numerous decisions of this court. It has been uniformly held, for example, that the States cannot by legislation place burdens upon commerce with foreign nations or among the several States. "But upon an examination of the cases in which they were rendered," as was said in Sherlock v. Alling, 93 U. S., 99, 102, "it will be found that the legislation adjudged invalid imposed a tax upon some instrument or subject of commerce, or exacted a license fee from parties engaged in commercial pursuits, or created an impediment to the free navigation of some public waters, or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all the cases, the legislation condemned operated directly upon commerce, either by way of tax upon its business, license upon its pursuit in particular channels, or conditions for carrying it on." In that case it was held that a statute of Indiana, giving a right of action to the personal representatives of the deceased where his death was caused by the wrongful act or omission of another, was applicable to the case of a loss of life occasioned by a collision between steamboats navigating the Ohio River engaged in interstate commerce, and did not amount to a regulation of commerce in violation of the Constitution of the United States. On this point the court said (p. 103): "General legislation of this kind, prescribing the liabilities or duties of citizens of a State, without distinction as to pursuit or calling, is not open to any valid objection because it may affect persons engaged in foreign or interstate commerce. Objection might, with equal propriety, be urged against legislation prescribing the form in which contracts shall be authenticated, or property descend or be distributed on the death of its owner, because applicable to the contracts or estates of persons engaged in such commerce. In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. . . . . And it may be said generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit." In that case it was admitted, in the opinion of the court, that Congress might legislate, under the power to regulate commerce, touching the liability of parties for marine torts resulting in the death of the persons injured, but that, in the absence of such legislation by Congress, the statute of the State, giving such right of action, constituted no encroachment upon the commercial power of Congress, although, as was also said (p. 103), "It is true that the commercial power conferred by the Constitution is one

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without limitation. It authorizes legislation with respect to all the subjects of foreign and interstate commerce, the persons engaged in it, and the instruments by which it is carried on."

The statute of Indiana held to be valid in that case was an addition to and an amendment of the general body of the law previously existing and in force regulating the relative rights and duties of persons within the jurisdiction of the State, and operating upon them, even when engaged in the business of interstate commerce. This general system of law, subject to be modified by State legislation, whether consisting in that customary law which prevails as the common law of the land in each State, or as a code of positive provisions expressly enacted, is nevertheless the law of the State in which it is administered, and derives all its force and effect from the actual or presumed exercise of its legislative power. It does not emanate from the authority of the National Government, nor flow from the exercise of any legislative powers conferred upon Congress by the Constitution of the United States, nor can it be implied as existing by force of any other legislative authority than that of the several States in which it is enforced. It has never been doubted but that this entire body and system of law, regulating in general the relative rights and duties of persons within the territorial jurisdiction of the State, without regard to their pursuits, is subject to change at the will of the legislature of each State, except as that will may be restrained by the Constitution of the United States. It is to this law that persons within the scope of its operation look for the definition of their rights and for the redress of wrongs committed upon them. It is the source of all those relative obligations and duties enforceable by law, the observance of which the State undertakes to enforce as its public policy. And it was in contemplation of the continued existence of this separate system of law in each State that the Constitution of the United States was framed and ordained with such legislative powers as are therein granted expressly or by reasonable implication.

It is among these laws of the States, therefore, that we find provisions concerning the rights and duties of common carriers of persons and merchandise, whether by land or by water, and the means authorized by which injuries resulting from the failure properly to perform their obligations may be either prevented or redressed. A carrier exercising his calling within a particular State, although engaged in the business of interstate commerce, is answerable according to the laws of the State for acts of nonfeasance or misfeasance committed within its limits. If he fail to deliver goods to the proper consignee at the right time or place, he is liable in an action for damages under the laws of the State in its courts; or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, a right of action for the consequent damage is given by the local law. In neither case would it be a defence that the law giving the right to redress was void as being an unconstitutional regulation of commerce by the State. This, indeed, was the very point decided in Sherlock v. Alling, above cited. If it is competent for the State thus to administer justice according to its own laws for wrongs done and injuries suffered, when committed and inflicted by defendants while engaged in the business of interstate or foreign commerce, notwithstanding the power over those subjects conferred upon Congress by the Constitution, what is there to forbid the State, in the further exercise of the same jurisdiction, to prescribe the precautions and safeguards foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, it is admitted the State has power to redress and punish? If the State has power to secure to passengers conveyed by common carriers in their vehicles of transportation a right of action for the recovery of damages occasioned by the negligence of the carrier in not providing safe and suitable vehicles, or employees of sufficient skill and knowledge, or in not properly conducting and managing the act of transportation, why may not the State also impose, on behalf of the public, as additional means of prevention, penalties for the non-observance of these precautions? Why may it not define and declare what particular things shall be done and observed by such a carrier in order to insure the safety of the persons and things he carries, or of the persons and property of others liable to be affected by them?

It is that law which defines who are or may be common carriers, and prescribes the means they shall adopt for the safety of that which is committed to their charge, and the rules according to which, under varying conditions, their conduct shall be measured and judged; which declares that the common carrier owes the duty of care, and what shall constitute that negligence for which he shall be responsible.

But for the provisions on the subject found in the local law of each State, there would be no legal obligation on the part of the carrier, whether *ex contractu* or *ex delicto*, to those who employ him; or if the local law is held not to apply where the carrier is engaged in foreign or interstate commerce, then, in the absence of laws passed by Congress or presumed to be adopted by it, there can be no rule of decision based upon rights and duties supposed to grow out of the relation of such carriers to the public or to individuals. In other words, if the law of the particular State does not govern that relation, and prescribe the rights and duties which it implies, then there is and can be no law that does until Congress expressly supplies it, or is held by implication to have supplied it, in cases within its jurisdiction over foreign and interstate commerce. The failure of Congress to legislate can be construed only as an intention not to disturb what already exists, and is the mode by which it adopts, for cases within the scope of its power, the rule of the State law, which until displaced covers the subject.

There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as adopted by the several States each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. Wheaton v. Peters, 8 Peters, 591. A determination in a given case of what that law is may be different in a court of the United States

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from that which prevails in the judicial tribunals of a particular State. This arises from the circumstance that the courts of the United States, in cases within their jurisdiction, where they are called upon to administer the law of the State in which they sit, or by which the transaction is governed, exercise an independent though concurrent jurisdiction, and are required to ascertain and declare the law according to their own judgment. This is illustrated by the case of Railroad Co. v. Lockwood, 17 Wallace, 357, where the common law prevailing in the State of New York, in reference to the liability of commom carriers for negligence, received a different interpretation from that placed upon it by the judicial tribunals of the State; but the law as applied was none the less the law of that State.

In cases, also, arising under the *lex mercatoria*, or law merchant, by reason of its international character, this court has held itself less bound by the decisions of the State courts than in other cases. Swift v. Tyson, 16 Pet., 1; Carpenter v. Providence Washington Insurance Co., 16 Pet., 495; Oates v. National Bank, 100 U. S., 239; Railroad Company v. National Bank, 102 U. S., 14.

There is, however, one clear exception to the statement that there is no national common law. The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history. The code of constitutional and statutory construction which, therefore, is gradually formed by the judgments of this court, in the application of the Constitution and the laws and treaties made in pursuance thereof, has for its basis so much of the common law as may be implied in the subject, and constitutes a common law resting on national authority. Moore v. United States, 91 U. S., 270.

The statute of Alabama, the validity of which is drawn in question in this case, does not fall within this exception. It would, indeed, be competent for Congress to legislate upon its subject-matter, and to prescribe the qualifications of locomotive engineers for employment by carriers engaged in foreign or interstate commerce. It has legislated upon a similar subject by prescribing the qualifications for pilots and engineers of steam vessels engaged in the coasting trade and navigating the inland waters of the United States while engaged in commerce among the States (Revised Statutes, tit. 52, secs. 4399-4500), and such legislation undoubtedly is justified on the ground that it is incident to the power to regulate interstate commerce.

In Sinnot v. Davenport, 22 Howard, 227, this court adjudged a law of the State of Alabama to be unconstitutional, so far as it applied to vessels engaged in interstate commerce, which prohibited any steamboat from navigating any of the waters of the State without complying with certain prescribed conditions, inconsistent with the Act of Congress of February 17, 1793, in reference to the enrollment and licensing of vessels engaged in the coasting trade. In that case it was said (p. 243): "The whole commercial marine of the country is placed by the Constitution under the regulation of Congress, and all laws passed by that body in the regulation of navigation and trade, whether foreign or coastwise, is therefore but the exercise of an undisputed power. When, therefore, an Act of the Legislature of a State prescribes a regulation of the subject repugnant to and inconsistent with the regulation of Congress, the State law must give way, and this without regard to the source of power whence the State legislature derived its enactment."

The power might with equal authority be exercised in prescribing the qualifications for locomotive engineers employed by railroad companies engaged in the transportation of passengers and goods among the States, and in that case would supersede any conflicting provisions on the same subject made by local authority.

But the provisions on the subject contained in the statute of Alabama under consideration are not regulations of interstate commerce. It is a misnomer to call them such. Considered in themselves, they are parts of that body of the local law which, as we have already seen, properly governs the relation between carriers of passengers and merchandise and the public who employ them, which are not displaced until they come in conflict with express enactments of Congress in the exercise of its power over commerce, and which, until so displaced, according to the evident intention of Congress, remain as the law governing carriers in the discharge of their obligations, whether engaged in the purely internal commerce of the State or in commerce among the States.

No objection to the statute, as an impediment to the free transaction of commerce among the States, can be found in any of its special provisions. It requires that every locomotive engineer shall have a license, but it does not limit the number of persons who may be licensed nor prescribe any arbitrary conditions to the grant. The fee of five dollars to be paid by an applicant for his examination is not a provision for raising revenue, but is no more than an equivalent for the service rendered, and cannot be considered in the light of a tax or burden upon transportation. The applicant is required before obtaining his license to satisfy a board of examiners in reference to his knowledge of practical mechanics, his skill in operating a locomotive engine, and his general competency as an engineer, and the board before issuing the licence is required to inquire into his character and habits, and to withhold the license if he be found to be reckless or intemperate.

Certainly it is the duty of every carrier, whether engaged in the domestic commerce of the State or in interstate commerce, to provide and furnish itself with locomotive engineers of this precise description, competent and well qualified, skilled and sober; and if, by reason of carelessness in the selection of an engineer not so qualified, injury or loss are caused, the carrier, no matter in what business engaged, is responsible according to the local law admitted to govern in such cases, in the absence of congressional legislation.

The statute in question further provides that any engineer licensed under the Act shall forfeit his license if at any time found guilty by the

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board of examiners of an act of recklessness, carelessness or negligence while running an engine, by which damage to person or property is done, or who shall immediately preceding or during the time he is engaged in running an engine be in a state of intoxication; and the board are authorized to revoke and cancel the license whenever they shall be satisfied of the unfitness or incompetency of the engineer by reason of any act or habit unknown at the time of his examination, or acquired or formed subsequent to it. The eighth section of the Act declares that any engineer violating its provisions shall be guilty of a misdemeanor, and upon conviction inflicts upon him the punishment of a fine not less than $50 no more than $500, and also that he may be sentenced to hard labor for the county for not more than six months.

If a locomotive engineer, running an engine, as was the petitioner in this case, in the business of transporting passengers and goods between Alabama and other States, should, while in that State, by mere negligence and recklessness in operating his engine, cause the death of one or more passengers carried, he might certainly be held to answer to the criminal laws of the State if they declare the offence in such a case to be manslaughter. The power to punish for the offence after it is committed certainly includes the power to provide penalties directed, as are those in the statute in question, against those acts of omission which, if performed, would prevent the commission of the larger offence.

It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations; they are constructed within the territorial limits of a State, and by the authority of its laws, and ordinarily by means of corporations exercising their franchises by limited grants from the State. The places where they may be located, and the plans according to which they must be constructed, are prescribed by the legislation of the State. Their operation requires the use of instruments and agencies attended with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill and care. The safety of the public in person and property demands the use of specific guards and precautions. The width of the gauge, the character of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals at points of special danger, the rate of speed at stations and through villages, towns and cities, are all matters naturally and peculiarly within the provisions of that law from the authority of which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of Congress exerted on the same subject, that they can be required to give way to the supreme authority of the Constitution.

In conclusion, we find, therefore, first, that the statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of interstate commerce, even when applied as in the case under consideration; secondly, that it is properly an act of legislation within the scope of the admitted power reserved to the States to regulate the relative rights and duties of persons being and acting within its territorial jurisdiction, intended to operate so as to secure for the public, safety of person and property; and, thirdly, that, so far as it affects transactions of commerce among the States, it does so only indirectly, incidentally and remotely, and not so as to burden or impede them, and, in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence.

For these reasons, we hold this statute, so far as it is alleged to contravene the Constitution of the United States, to be a valid law. The judgment of the Supreme Court of Alabama is, therefore, affirmed.

Mr. Justice BRADLEY dissented.

THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN, and BERNHARD T. VETTERLEIN, Appellants,

v.

DEMAS BARNES, Assignee in Bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein.

Decided January 9, 1888.

1. Where a policy of life insurance is by the assured assigned to one member of a firm, to secure an indebtedness due the partnership, the assignee cannot make a valid assignment of said policy to trustees for the benefit of his own wife and children.

2. The partnership held the entire beneficial interest in the policy, which was taken out by the assured to secure the debt he owed the firm, and that interest passed to their assignee in bankruptcy.

3. In the suit by the assignee in bankruptcy to recover the proceeds of said policy, for the benefit of the firm creditors, his claim is sustained, to the exclusion of the said wife and children, where the second assignment was made within six months before the filing of the petition in bankruptcy.

4. In the suit brought against the trustees, for the purpose of defeating the trust, the beneficiaries are not necessary parties defendant; and in such cases of representation by trustees acting in good faith, the beneficiaries will be bound by the judgment.

Appeal from Circuit Court of the United States for the Southern District of New York.

JOHN D. MCPHERSON, CALDERON CARLISLE and T. MITCHELL TYNG, for appellants.

JAMES K. HILL, HENRY T. WING and HARRINGTON PUTNAM, for appellee.

Mr. Justice HARLAN delivered the opinion of the court.

In and prior to the year 1867, the firm of Vetterlein & Co., composed of Theodore H. Vetterlein, Bernhard T. Vetterlein, Theodore J. Vetterlein, and Charles A. Meurer, and doing business in Philadelphia, assisted one J. Kinsey Taylor by lending him money and accept-

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ances. In the summer of that year, for the security of the firm, Taylor caused his life to be insured, the policies taken out by him being assigned to Theodore H. Vetterlein as security for Taylor's liability to the firm. In July, 1869, Meurer retired from the firm, Taylor's indebtedness to it being, at that time, nearly $50,000. In December, 1869, Theodore J. Vetterlein also left the firm. The remaining partners went on with the business, at the same place, under the same name, and with the same stock of merchandise, taken at valuation.

On or about the 18th of July, 1870, the policies—which, under some arrangement, had been reduced in amount—were assigned by Theodore H. Vetterlein to Bernhard T. Vetterlein and Theodore J. Vetterlein, as trustees for the wife and children of the assignor.

In the District Court of the United States for the Southern District of New York, sitting in bankruptcy, Theodore H. Vetterlein and Bernhard T. Vetterlein were adjudged bankrupts. The adjudication was made February 7, 1871, upon a petition of certain creditors of the bankrupts, filed December 28, 1870.

Taylor died July 1, 1871. Due proof of his death was made by B. T. Vetterlein and T. J. Vetterlein, and they were proceeding to collect the insurance moneys, when the present suit was brought in the District Court, August 10, 1871, by Barnes, assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, against the bankrupts, Theodore J. Vetterlein, and the insurance companies. The principal object of the suit was to enjoin B. T. and T. J. Vetterlein from collecting the amounts due on the policies. Barnes contended that, as assignee in bankruptcy, he was entitled to receive these insurance moneys, which is less in amount than Taylor's indebtedness to the bankrupts. His claim was sustained by the District Court, and, upon appeal to the Circuit Court, the decree of the former court was affirmed.

1. The District Court correctly held, upon the evidence, that at the time of the transfer by Theodore H. Vetterlein of the policies in question for the benefit of his wife and children, neither Meurer nor Theodore J. Vetterlein had any valuable pecuniary interest in the assets of the former firms, and that the firm of Vetterlein & Co., composed of Theodore H. Vetterlein and Bernhard T. Vetterlein, held the entire beneficial interest in the policies taken out to secure Taylor's debts. That interest passed to their assignee in bankruptcy.

2. Such transfer—which was within six months before the filing of the petition in bankruptcy—was made in contemplation of the insolvency of Theodore H. Vetterlein and Bernhard J. Vetterlein; and according to the weight of evidence the transferees, at that time, not only had reasonable cause to believe that Theodore H. Vetterlein was acting in contemplation of insolvency, but that such transfer was made with a view to prevent the moneys due on the policies from coming into the hands of an assignee in bankruptcy.

3. It is contended that the wife and children of Theodore H. Vetterlein were indispensable parties, and that it was error to proceed to a final decree without having them made defendants. The general rule undoubtedly is, that all persons materially interested in the result of a suit ought to be made parties, so that the court may "finally determine the entire controversy, and do complete justice by adjudging all the rights involved in it." Story v. Livingston, 13 Pet., 359, 375; Shields v. Barrow, 17 How., 130, 139. But in a suit brought against a trustee by a stranger, for the purpose of defeating the trust altogether, the beneficiaries are not necessary parties, if the trustee has such powers or is under such obligations, with respect to the execution of the trust, that "those for whom he holds will be bound by what is done against him, as well as by what is done by him." In such cases of representation by trustees, the beneficiaries will be bound by the judgment, "unless it is impeached for fraud or collusion between him and the adverse party." Kerrison v. Stewart, 93 U. S., 155, 160.

In Sears v. Hardy, 120 Mass., 529, the court, after observing that who shall be made parties to a suit in equity cannot always be determined by definite rules, but rests to some degree in the discretion of the court, said: "Generally speaking, however, to a suit against trustees to enforce the execution of a trust, *cestui que* trust, claiming present interests directly opposed to those of the plaintiff, should be made parties, in order that they may have the opportunity themselves to defend their rights, and not be obliged to rely upon the defence made by the trustees, or to resort to a subsequent suit against the trustees or the plaintiff, or to take the risk of being bound by a decree rendered in their absence." But the rule is different where the claim of the plaintiff antedates the creation of the trust, and the suit is brought, not in recognition or furtherance of the trust, but in hostility to it, as fraudulent and void. In Rogers v. Rogers, 3 Paige, 379—which was a suit by a judgment creditor to set aside as fraudulent an assignment by the debtor of his personal estate in trust for the payment of a debt to a particular bank, and to pay the residue of the proceeds thereof to other creditors of the assignor—it was objected, at the hearing, that the bank was not made a party defendant. The objection was held to be untenable, the chancellor observing: "As a general rule, the *cestui que* trust, as well as the trustee, must be parties, especially where the object is to enforce a claim consistent with the validity of the trust. But where the complainant claims in opposition to the assignment or deed of trust, and seeks to set aside the same on the ground that it is fraudulent and void, he is at liberty to proceed against the fraudulent assignee or trustee, who is the holder of the legal estate in the property, without joining the *cestui que* trust." Wakeman v. Grover, 4 Paige, 33; Irwin v. Keen, 3 Whar., 354, 355; Therasson v. Hickok, 37 Vt., 464; Hunt v. Weiner, 39 Ark., 76; Winslow v. Minnesota & Pacific R. R. Co., 4 Minn., 316; Tucker v. Zimmerman, 61 Geo., 601.

The assignment of the policies in question in rust for the wife and children of the assignor—the trust having been accepted—carried with it, by necessary implication, authority in the trustees, by suit or otherwise, to collect the insurance moneys for the beneficiaries. Indeed, they could not otherwise have fully discharged the obligations they assumed as trustees. They

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were entitled to represent the beneficiaries in their claim for the insurance money, and were under a duty to defend any suit, the object of which was to prevent the discharge of that duty, and to have the transfer of the policies set aside as fraudulent and void. It results that the wife and children of Theodore H. Vatterlein were not necessary parties defendant.

We perceive no error in the record, and the decree is affirmed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

WALLACE ELLIOT & CO.
v.
ERNEST MARONEY.

AT LAW. No. 27,419.

Decided December 12, 1887.
The CHIEF JUSTICE, and Justices HAGNER, JAMES and MERRICK sitting.

1. Where a garnishee holds property which once belonged to the defendant, but which before the garnishment was for a valuable consideration sold to the garnishee, the attachment cannot reach it; and the garnishee may intervene in the proceedings to defend it from condemnation.

2. The fact that such intervenor does not specify among his grounds for moving to quash the attachment that he is the actual owner of the property is not material if the affidavit accompanying his motion expressly disclose such to be his ground of objection.

Appeal by plaintiffs from an order quashing an attachment.

THE FACTS are stated in the opinion.

ABRAHAM & MAYER, for appellants.

CHAS. S. MOORE and THOS. M. FIELDS for the intervenor, appellee.

Mr. Justice HAGNER delivered the opinion of the court.

The declaration containing the common counts was filed on the 20th of December, 1886, and on the same day an affidavit of the plaintiff's agent, as the ground of an application for an attachment against Ernest Maroney, charging that he was evading service of process by concealing himself and withdrawing from the District temporarily, accompanied by a supporting affidavit of a third party. On the same day the writ of attachment was issued, and a quantity of goods in the store which had been occupied by Maroney were seized by the marshal under the writ.

John L. Killeen filed a motion for leave to intervene in the case, accompanied by his affidavit that seven days before the attachment was issued he had bought from Maroney, in good faith, without notice and for value, the goods so seized by the marshal; had paid for them and taken possession, and received a bill of sale conveying them to him, which had been duly recorded on the same day; and that he was still in possession when they were so seized.

An order was passed allowing him to intervene as prayed; and he then filed a motion to quash the attachment, assigning as reasons: 1, that the affidavits were insufficient; 2, the undertaking was not in the form required by law; and 3, for other reasons appearing on the record. Further affidavits were filed by Killeen and by the plaintiff, and upon hearing the attachment was quashed; and the appeal is from that ruling.

On the appeal it has been insisted on behalf of the plaintiffs, that Killeen had no right to intervene; that if he had such right, he could not be allowed to impeach the regularity of the proceedings; and further, that if he had such right and desired to defend upon the ground that he was the owner of the property, he was bound to specify that reason in his motion; which he had omitted to do.

The fact of the sale and conveyance of the goods seized is fully proved. Indeed there is no denial by the plaintiffs either of the sale and transfer, or of his entire *bona fides;* although it was competent for them to impeach the grantee's title to the property as well upon the form as the honesty of the transfer, and on these grounds to insist that the property is still liable for the defendant's debts. Drake, Attachment, sec. 523.

Says the same author: "Where a garnishee holds property which once belonged to the defendant, but which before the garnishment, was, for a valuable consideration, sold to the garnishee, the attachment of course cannot reach it. It is no longer the property of the defendant, but of the garnishee. In any such case, if the assignment be in writing, and bear date before the attachment, and there is nothing to repel the presumption that it bears its true date, it will be effectual as against the attachment; and no evidence of its delivery, or of its receipt and acceptance by the garnishee, before service of the attachment, is necessary to perfect it and give it priority." *Id.*, sec. 522.

The right of the actual owner to intervene in the proceeding to defend his property from condemnation under the attachment is clearly maintainable, as well upon reason as authority. The proceeding by attachment in the State of Maryland, although the subject of statute from the earliest history of the Province (1647, chap. 3), had its origin in the process of foreign attachment under the custom of London, the antiquity of which would justify its recognition as part of the common law; and the statutes were merely regulations of pre-existing rights.

It was said at an early day in that State, in construing one of these Acts (1695, chap. 45), in the absence of a special provision to that effect in the statute, that "For an apparent defect in the proceedings the attachment may be quashed, upon suggestion of such defect to the court, either by the defendant himself, or a third party claiming an interest in the property attached;" and that "As the attachment is a summary proceeding, every fact is cognizable by the court which will show that the attachment issued irregularly, to show that the property attached does not belong to the defendant. Campbell v. Morris, 3 Harr. & McH., 535.

The provisions of our Revised Statutes were only designed to change the existing law and practice in the District, so as to authorize the clerk to issue the attachment without a previous warrant from a judge or justice, and to prescribe the formalities which should precede and follow the issue of the writ; but nothing in those sections denies any previous right of the

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owner existing in the District to intervene in the proceeding for the protection of his property.

In U. S. v. Howgate, 2 Mackey, 408, Mrs. Houghton was permitted to file a petition alleging herself to be the owner of the property attached, under a deed executed before the levying of the attachment; and her motion to quash was granted and the property restored to her. The hardship of the real owner being deprived of his property while awaiting the determination of the inquiry whether the defendant owes money to the plaintiff was suggested by one of the justices in his concurring opinion, as a reason why the owner's right to interfere should be acknowledged.

As to the objection that Killeen's assignment of reason in his motion to quash did not specify the one we have been considering, it appears that the affidavit accompanying his motion expressly disclosed this as his ground of objection, and the hearing below was plainly directed to its consideration; and it would be most unjust to refuse to entertain his reasonable application upon so technical a ground.

As the decision of this point is fatal to the attachment, it is unnecessary to consider the other points presented in the argument.

The judgment below is affirmed.

SUPREME COURT OF PENNSYLVANIA.

REIFF v. McMILLER.

Absolute oral promise by the endorser of a promissory note to the endorsee, the holder, before the maturity of the note, to pay it after maturity, is not a waiver of, nor does it dispense with due notice of dishonor by the maker.

Parol evidence of an absolute verbal promise by the endorser to the endorsee, before the maturity of the note, that he would pay it, is within the Statute of Frauds, and cannot be enforced.

Mr. MULVANY, for plaintiff in error.

G. R. FOX, Esq., for defendant in error.

Error to the Court of Common Pleas of Montgomery county.

This was an action of assumpsit upon a promissory note at four months, drawn by Hamill in favor of McMiller, and by him endorsed. Reiff was the endorsee, McMiller an accommodation endorser. The money went to Hamill.

Reiff brought assumpsit against McMiller. The declaration contained three counts:

1. The ordinary printed form of endorsee against endorser.

2. A special count, setting forth the note, its endorsement, non-payment, etc. And further, that "before the note became due defendant told plaintiff that Hamill could not pay the note, and that he, defendant, would have to pay it, and that he would pay the same on the first day of April then next ensuing. Also that, before the note became due defendant took from Hamill a judgment note for the amount of the note and interest, and entered the judgment thereon to meet his liability for the note in suit, and in satisfaction for his undertaking to pay it."

3. The third count was like the second, leaving out defendant's absolute promise to pay on the following April 1st.

On the trial before SMYSER, P. J., plaintiff offered to prove by a witness as follows:

"That the witness accompanied plaintiff to the office of defendant in Norristown, and that plaintiff then, in presence of the witness, asked defendant when he would be prepared to pay the money; that defendant asked in reply whether he had the note with him; to which plaintiff replied, yes, and handed the note to him; that defendant took it and then on looking at it said, 'You did not have the note protested.' Reiff said no, because you promised to pay it. That defendant then handed the note back to plaintiff, saying, 'I'm off;' that plaintiff then asked him, did'nt you tell me just before the note was due that you would pay it, that Hamill could not; that you would have to pay it, and that you would do so on the first of April next? To which defendant replied, yes, but he expected to be legally bound to pay it." To be followed by proof by another witness that defendant told said witness that he had taken a judgment from the drawer to indemnify him against his liability on said note, before it was due, expecting to have to pay it, and that Hamill was insolvent. To be followed further by the record of the said judgment, and by proof that at the maturity of the note Hamill was utterly insolvent.

Defendant objected to the evidence, and it was rejected by the court, and the jury directed to find a verdict for defendant.

Plaintiff took this writ of error.

Opinion by WOODWARD, C. J.

What the learned judge said in rejecting the plaintiff's evidence sufficiently rules the case as presented in the first count of the plaintiff's *narr.*

The other counts are upon the oral promise of the defendant, and they do not allege an acceptance of that promise in a manner to consummate a contract; and if they did it would be but a parol contract to pay another's debt, which, since our Act of April 26th, 1855, cannot be enforced. On every ground we think that the ruling was right, and the judgment is accordingly affirmed.—*Legal Intelligencer.*

LOUISIANA SUPREME COURT.

ABSTRACT.

TISSOT v. GREAT SOUTHERN TELEPHONE AND TELEGRAPH CO.

December 5, 1887.

In this case it was held, that a company which undertakes, under a contract with a municipal corporation, to do a work of public improvement, such as laying a fire-alarm telegraph, has no right to invade the premises of an abutting proprietor and cut off limbs of trees overhanging the sidewalk, and which do not obstruct the use of the sidewalk, or when the posts and wires could have been, with less or no inconvenience, located elsewhere. The court said: "It is to be noted, that the property in the instant case is situate in the suburban or rural part of the city, in front of a water-course, known as a 'Bayou,'

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and that right next to the trees, on the street side, there exists a small sidewalk of between two and three feet in width. To those who live in this climate, particularly during the hot summer months, when the thermometer points to about 100, if not more, it would be needless to argue that the overhanging of branches of magnolia trees on such sidewalk, is no nuisance, but on the contrary actually proves of great relief, not only against the heat, but also sometimes even against the rain itself. The court can take judicial notice of the fact that on many sidewalks in the city and its suburbs or outskirts, there has been planted a number of trees, and it knows that this is done with the special sanction of the municipal authorities, though subject to its good pleasure alone. Jew. Dig., 519. . . . The defendants have called our attention to what was said in the case of the Earl of Lonsdale, 2 Barn. & C., 302, by Mr. Justice Best, and which is to the effect that the permitting the branches of trees to extend so far beyond the soil of the owners of the trees is an unequivocal act of negligence, which the injured party may abate without notice; but the learned justice adds that the security of lives and property may sometimes require so speedy a remedy as not to allow time to call on the person on whose property the nuisance has arisen to remedy it, and that in all other cases persons should not take the law into their own hands, but follow the advice of Lord Hale and appeal to a court of justice. It may well be that under the circumstances under which the litigation arose, the learned justice thought himself authorized to announce what he deemed to be a principle, but from his own language the course could only be justified when security to life and property would require a speedy remedy. . . . Had, by mere accident, the limbs of the trees on plaintiffs' property been detached therefrom and fallen across the sidewalk, remaining there so as to prevent the use of it by wayfarers, there is no doubt that the city, or any person injured, could have had the right (the obstruction proving a nuisance, the necessary remedy having to be applied at once) to remove it, some way or other, without any notice to the proprietor of the trees, even had it been necessary to enter upon the premises, as an indispensable means to accomplish the removal, but doing no more damage than would be essential to effect the object, remaining liable for any wanton or uncalled-for injury. The existence of the emergency alone would justify the interference. 9 U. S. Dig., 'Nuisance,' p. 649, Nos. 62, 63, 67, 68; Cooley Torts, 47. It is upon this principle, that while recognizing the rights of the defendant to put up poles and run wires thereon, this court has, in the Irwin case, 37 La. Ann., 67, relieved the defendant, because the right had been exercised with as little inconvenience as possible to the plaintiffs and to the public. The argument is fallacious, and a begging of the question that in this case, although the limbs were not strictly a nuisance, they were obstacles in the way of a public, necessary improvement, which had to be instantly removed; for it is not shown that it was actually impossible to put up the posts and run the wires at any other place or otherwise than through the space occupied by the branches and the foliage. It is apparent, from an inspection of the map or plat in evidence, that it would have been easy to have planted the telegraph posts, and run the wires on them, on the other side of the street, or on the embankment of the bayou, without interfering with the tow-path used for cordelling schooners and other crafts up and down the water-course. It is likewise manifest, that even if the posts could not have been erected elsewhere, there existed no reason whatever to cut off the limbs of the trees, so as to leave in the foliage an open space ranging from twenty-five to forty feet in circumference, or eight to thirteen feet in diameter, for the mere purpose of running through that space an almost imperceptible wire. . . . It is evident that the plaintiffs have sustained injury in the wanton invasion of their premises, in the unjustified destruction of their property, in the deprivation of material, physical and moral enjoyment, in the endurance of aggrieved feelings and in the apprehension of a possibly irremediable wrong, for all of which they are entitled to compensatory damages. The evidence shows the value of the trees, what it would cost to replace them, how long it would take for the newly-planted trees to acquire the size of those mutilated. It establishes that these were ornaments of the property, planted by Mrs. Tissot. It does not put a value upon the disappointment, mortification and other sufferings of the plaintiffs, as such things cannot be said to be measurable and appreciable in dollars, though when there has been a mental endurance some adequate pecuniary compensation must be made. . . . We deem that under the circumstances the damage done is daily being repaired, and that in the course of time it will hardly be perceptible, so that the original condition of things will be fully restored. We do not think, however, in the absence of any fixed rule for the allowance of such damages, that the plaintiffs are entitled to recover the amount allowed below. It is therefore adjudged and decreed, that the judgment of the lower court be amended so as to allow the plaintiffs $400, instead of $750. See Memphis Bell Telephone Co. v. Hunt, 16 Lea, 456; S. C., 57 Am. Rep., 237, to same effect.—*Albany Law Journal.*

THE COURTS.

Supreme Court of the United States.

February 13.

491. The U. S. v. Jung Ah Lung. Decree affirmed and case remanded.

160. Munson v. The Mayor of New York; and 161. The Mayor of New York v. Munson. Decree reversed.

154. The U. S. v. The British Steamer Strathairly etc. Decree reversed and case remanded.

137. Thornton v. Schreiber. Judgment reversed with costs and case remanded.

490. Phillips et al. v. The Mound City and Water Association et al. Dismissed for want of jurisdiction.

166. The Glacier Mountain Silver Mining Co. v. Willis et al. Ordered that further consideration of motion to reinstate be postponed until March 19.

Order.—The Reporter having represented that, owing to the number of decisions at the term, it will be impracticable to put the reports in one volume, it is therefore now here ordered that he publish an additional volume in this year, pursuant to section 681 of the Revised Statutes.

1152. Baines et al. v. Dodge et al. Dismissed with costs.

312. The Mexican National Construction Co. v. Reusens; and 324. The Same v. Frye. Dismissed.

142. Spencer et al. v. McMaster. Judgment of dismissal vacated and case restored to the docket.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the matter of the Estate of Polly Y. Brownell, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Temperance P. Reed.

All persons interested are hereby notified to appear in this Court on Friday, the 16th day of March, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

8 Test: DORSEY CLAGETT, Register of Wills.

F. D. McKenney, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the case of John Marbury, jr., Administrator c. t. a. of Harriet H. Marbury, late of Washington County, in the District of Columbia, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at eleven o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test. DORSEY CLAGETT, Register of Wills.

No. 2557. Ad. D. 13. J. Carter Marbury, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal Estate of Bernard Overman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of February, 1888.

8 ELIZABETH OVERMAN, Adm'x, 937 M st. n. w.

No. 2964. Ad. D. 13. Wm. E. Edmonston, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Clabaugh, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of February, 1888.

8 EDWIN B. HAY, Adm'r, 1425 N. Y. ave.

No. 2989. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard Nichlas, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of February, 1888.

8 GUY CARLTON, Adm'r, 1740 14th st. n. w

No. 2970. Ad. D. 13. Fillmore Beall, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBJA.

Holding a Special Term for Orphans' Court Business.

February 15h, 1888.

In the case of Noble D. Larner, Executor of Margaret Kennedy, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney, duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test: DORSEY CLAGETT, Register of Wills.

No. 2588. Ad. D. 13. John B. Larner, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Otis P. G. Clarke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1888.

8 CHAS. W. FITTS, Adm'r, 1006 F st. n. w.

No. 2990. Ad. D. 13. R. D. Mussey, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Curtis Costin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1888.

8 LUCY G. M. COSTIN, Ex'x, 315 11th st. s. e.

No. 2965. Ad. D. 13. Bryson Tilley, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 10th, 1888.

In the case of Benjamin F. Leighton, Administrator of Sebastean de Lassa, late of Havana, Cuba, dec'd, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

7 Test: DORSEY CLAGETT, Register of Wills.

No. 2520. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of February, 1888.

Nannie Risque Wilson } No. 10,778.
v. } Equity Docket 27.
Elizabeth F. Risque et als. }

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, Carey Jacqueline Risque, infant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to vest in the plaintiff, in fee, part of lot 195, in Beatty & Hawkins' addition to Georgetown, District of Columbia, beginning on South side of 5th street, at a point 138 feet east from Frederick street, and run east on 5th street 25 feet, thence south 150 feet, thence west 25 feet, thence north 150 feet to beginning.

By the Court. E. F. BINGHAM, Chief Justice, &c

A true copy. Test: R. J. MEIGS, Clerk, &c.

7 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of February, 1888.

Elizabeth Altschuh
v.
Frank G. Altschuh. } No. 10,868. Docket 27.

On motion of the plaintiff, by Mr. D. W. Glassie, her solicitor, it is ordered that the defendant, Frank G. Altschuh, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is absolute divorce.

By the Court. E. F. BINGHAM, Chief Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
6 By H. W HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of February, 1888.

Charles Walter
v.
Solomon Schlomberg. } No. 10,951. Docket 27.

On motion of the plaintiff, by Mr. Duhamel, his solicitor, it is ordered that the defendant, Joseph Williams, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the equitable estate of the Adas Israel Hebrew Congregation in part of lot 6, square 487, to judgment at law.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
7 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ellery C. Ford, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of February, 1888.
7 JULIA A. FORD, Ex'x,
No. 2979. Ad. D. 13. 503 Maple ave., Le Droit Park.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of February, A. D. 1888.

Charles A. Bradford et al.,
Complainants,
v.
Anna Castell et al.,
Defendants. } No. 10,959.
Equity Docket 27.

On motion of the complainant, by Messrs. Neill Dumont and Reginald Fendall, their solicitors, it is ordered that the defendants, Anna Castell, William Nokes, George W. Nokes, jr., an infant, and Matilda C. Nokes, an infant, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest the defendants of any title to the lot of ground No. 26, and the south 20 feet 6½ inches, from front to rear, of lot 25, in square No. 990, in the city of Washington, District of Columbia, and remove from the complainant Charles A. Bradford's title thereto, a cloud thereon arising from a defect in a deed from Edward O. Castell and others to Barzilla C. Betts, dated September 24th, 1864, and recorded among the Land Records of said District, in Liber C. T. No. 55, fol. 84.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
7 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William Purcell, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of February, 1888.
7 JOHN J. PURCELL, Adm'r, 1458 R. I. ave. n. w.
Wm. J. Miller, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,
February 11th, 1888.

In the matter of the Estate of Susan Walker, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Benjamin Butterworth.

All persons interested are hereby notified to appear in this Court on Friday, the 2d day of March, 1888, next, at eleven o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
7 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court Business.
February 10th, 1888.

In the matter of the Estate of Thomas Duke, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Tetamentary on the Estate of the said deceased has this day been made by Sallie D. Duke.

All persons interested are hereby notified to appear in this Court on Friday, the 2d day of March next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published three times in the Washington Law Reporter and once in the Washington Post previous to the said day.

By the Court. W. S. COX, Justice.
7 Test: DORSEY CLAGETT, Register of Wills.
J. Thomas Sothoron, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of February, 1888.

Susan Evaline Murray
v.
Mary W. Joyce et al. } No. 10,989. Equity Docket 27.

On motion of the plaintiff, by Mr. Chas. A. Elliot, her solicitor, it is ordered that the defendants, Robert H. Ward and James A. Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to appoint a trustee under a deed of trust, in place of William H. Ward, deceased.

By the Court: W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
7 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Thomas Lawrason Riggs, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of February, 1888.
7 E. FRANCIS RIGGS, Adm'r.
No. 2971. Ad. D. 13. Jno. Selden, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
February 3d, 1888.

In the case of William J. Miller, Executor of Ellen Owen, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 2d day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test: DORSEY CLAGETT, Registor of Wills.
No. 2601. Ad. D. 13. Carusi & Miller, Proctors.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Joseph Kleindienst, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of February, 1888.

7 M. E. KLEINDIENST, Adm'x, 3418 M st. n. w.

Randolph Coyle, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Henry Smith, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of February, 1888.

8 FRANK H. OVER, Ex'r, 424 1st st. s. e.

No. 2823. Ad. D. 13. Birney & Birney, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of February, 1888.

Thomas McGill, Amanda A. Witherow et al. v. Hugh Cameron. — No. 10,918. Docket 27. Equity.

On motion of the plaintiffs, by Messrs. Edwards & Barnard, their solicitors, it is ordered that the defendant, Hugh Cameron, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to perfect the title of complainants to the west twenty-five (25) feet front, of lot number two (2), in square thirty-three (33), in Washington city, D. C.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

6 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of February, 1888.

Daniel McLaughlin v. Peter McIntire et al. — No. 10,871. Equity Docket 27.

On motion of the plaintiff, by Mr. Frank T. Browning, his solicitor, it is ordered that the defendant, John W Lumsden, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to wind up the affairs of the Twelfth Building Association of Georgetown, D. C., and for the appointment of a receiver.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

6 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Lord, for the use of W. W. Kirby, v. Patrick O'Donnoghue et al. — No. 8,429. Equity.

L. Cabell Williamson, trustee herein, having reported the sale of sub-lot 33, in square 749, to Michael Horan, for $444, and the sale of sub-lots 34 ond 35, in square 749, to Rudolph Goldschmid, for $816.$\frac{24}{100}$; and also the sale of sub-lots 38, 39, 40 and 41, to Rudolph Godschmid, for $1,496, all of said lots being in Patrick O'Donnoghue's subdivision of said square 749, in the city of Washington and District of Columbia, it is, this 7th day of February, 1888, by the Court ordered, that said sales be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 12th day of March, 1888.

Provided a copy of this order be published in "The Washington Law Reporter." once a week for three successive weeks before to the said 12th day of March, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

6 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 10th, 1888.

In the case of Benjamin F. Leighton, Administrator of Baron Kessel, late of Havana, Cuba, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2nd day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administrator will take the benefit of the law against them.

Provided, a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

7 Test: DORSEY CLAGETT, Register of Wills.

No. 2521. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3rd, 1888.

In the case of Mary H. J. Bush and Willard Saulsbury, jr., Executors of Maria S Thomson, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter prevoius to the said day.

6 Test. DORSEY CLAGETT, Register of Wills.

No. 2722. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3rd, 1888.

In the case of Mary H. J. Bush and Willard Saulsbury, jr., Administrators d. b. n. c. t. a. of Sarah M. Thomson, dec'd, the Administrators d. b. n. c. t. a. aforesaid have, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrators d. b. n. c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test. DORSEY CLAGETT, Register of Wills.

No. 424. Ad. D. 8.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Dennis Callaghan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of February, 1888.

7 DANIEL O'C. CALLAGHAN, Ex'r,

No. 2978. Ad. D. 13. 1006 F st. n. w., Rooms 3 and 4.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas A. Richards, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 14th day of February, 1888.

9 SARAH ANN RICHARDS, Ex'x, 1016 N. J. ave. s. e.

No. 2987. Ad. D. 13. J. J. Wilmarth, Protorc.

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Addison on Contracts, 1847.
Alabama Revised Code, 1867.
Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

Hannon's Digest, vols. 1 and 2.
Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

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WASHINGTON, D. C. - - - - MARCH 7, 1888.

SUPREME COURT OF THE UNITED STATES.

REPORTED BY WM. STONE ABERT.

COPYRIGHT.

EDWARD B. THORNTON, Plaintiff in Error,
v.
FRANCIS SCHREIBER, SR., GERHARD SCHREIBER, HENRY SCHREIBER and CONRAD SCHREIBER, trading as SCHREIBER & SONS.

Decided February 13, 1888.

In an action brought by the owner of a valid copyright of a photograph, to recover from an alleged infringer, the statutory penalty declared in section 4965 of the Revised Statutes, of one dollar for every sheet of the copies "*found in his possession;*" where it appears from the evidence that the only possession the defendant ever had of the copies was the possession of the partnership by which he was employed, holding the copies merely as their employee, in their business house, subject to their order and control, and never with any claim of right in him to control them except in their service; *Held*, that the plaintiff is not entitled to recover.

In error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

W. A. MANDERSON, JOHN G. JOHNSON and FRANK P. PRICHARD for plaintiff in error.

H. P. BROWN, J. R. PAUL, A. S. BIDDLE and J. K. VALENTINE for defendant in error.

Mr. Justice MILLER delivered the opinion of the court.

This is a *qui tam* action brought by the defendants in error, constituting a partnership in the name of Schreiber & Sons, against Thornton, the plaintiff in error, under Sec. 4965 of the Revised Statutes. This is found in Chap. 3, Tit. LX, which has relation to copyrights. As we have heretofore decided in the case of Burrow Giles Lithographic Co. v. Sarony, 111 U. S., 53, photographs are included, under certain circumstances, among the things which may be copyrighted.

The plaintiffs in this action allege themselves to be the owners of a valid copyright of a photograph, entitled "The Mother Elephant 'Hebe' and her Baby 'Americus,'" and that the defendant, Thornton, was liable to them under the above section for an infringement of their exclusive right in such photograph. The declaration consisted originally of four counts, but the plaintiffs afterwards obtained leave to amend it by striking out the third and fourth. Of the two counts which remained, the first was for copying and printing said photograph, with the charge that 15,000 sheets of the same were found in the defendant's possession, printed and copied by him, and claiming the sum of $15,000 as forfeited to plaintiffs and to the United States under said section. The second count alleged that the defendant published said photograph, and that 15,000 sheets of the same were found in his possession.

Section 4965, on which this action is founded, reads as follows:

"If any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this chapter, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed to sale; one-half thereof to the proprietor, and the other half to the use of the United States."

It will be observed that this section gives no right of action to recover damages, merely as such, by the owner of the photograph, but limits the remedy to the forfeiture of the plates on which the infringing article is copied, "and every sheet thereof, either copied or printed," and to the further forfeiture of "one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported or exposed for sale." In case of "a painting, statue or statuary," there is to be a forfeiture of ten dollars for every copy found in the defendant's possession, or by him sold or exposed for sale.

In section 4964, immediately preceding the one under consideration, it is declared that every person who shall, without the consent of the proprietor of a copyrighted *book*, print, publish, import, sell or expose for sale any copy of such book, shall not only forfeit every copy thereof to such proprietor, but shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor. And so in section 4966, which immediately follows the one under consideration, it is declared that "any person publicly performing or representing any *dramatic composition* for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just."

It will thus be seen, that while this chapter provides a remedy by a civil action on behalf of the owner of the copyright of a book or dram-

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atic composition which has been violated, it makes no such provision in favor of a copyright of "any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary or model, etc.," except so far as it forfeits the plates on which they are copied, and the sheets, either copied or printed, and one dollar for every sheet found in the possession of the defendant. Section 4967 also allows an action for damages by the author or proprietor of any *manuscript* published without his consent.

As the action in the present case is brought by plaintiffs below, who sued as well for the United States as for themselves, under the idea that the Government was entitled to one moiety of the penalty recovered, an examination of the statute presents a question at the outset as to whether the United States has any interest in the only penalty sought to be recovered, namely, that of one dollar for each sheet of the photographs found in the possession of the defendant. Looking critically at the language of the statute, the question is suggested, whether the one-half of the amount recovered, which is to go to the United States, extends beyond the case of "a painting, statue or statuary."

It will be observed, that in the beginning of the penalty denounced in this section, it is said that the defendant "shall forfeit to the proprietor (meaning the proprietor of the copyright) all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported or exposed for sale," and recurring, after a semicolon, to another branch of the subject, it is said that "in case of a painting, statue or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor, and the other half to the use of the United States."

With regard to the copyrighted articles mentioned in the section under consideration, it would seem that the first penalty is a forfeiture of them to the *proprietor*, and afterwards, when other copyrighted articles, enumerated as "a painting, statue or statuary," where the amount forfeited is different, it provides that one-half of the forfeiture shall be to the proprietor, and the other half to the use of the United States.

This point, however, was not raised by either counsel in the argument, and as we are of opinion that the copies for which judgment was recovered in this case against the defendant were not found in his possession, within the meaning of the statute, it is unnecessary to decide it here.

This suit was brought originally in the District Court of the United States for the Eastern District of Pennsylvania. It was there tried before a jury, and a verdict rendered in favor of the plaintiffs for a forfeiture of one dollar for each of the copies found in defendant's possession, amounting to $14,800, for which judgment was entered in that court. A bill of exceptions, taken at that trial, is found in the record. A writ of error took the case to the circuit court for that district, which, on the case as made in the district court, affirmed its decision. To this latter judgment the present writ of error is directed.

The assignment of errors questions the validity of the copyright, both as regards the subject-matter of the photograph, and as regards the evidences of proper proceedings with the librarian to make the copyright effective. There are also other errors assigned, which it might be interesting to examine, but which we do not think necessary to a decision of the case as it is now before us.

The judge in the trial in the court below charged the jury as follows:

"The court instructs you that under the evidence if you believe it, and the court sees nothing that would justify disbelief, the plaintiff is entitled to recover and to have damages assessed at the rate of one dollar ($1.00) for every sheet of that copied photograph found in his [defendant's] possession, and every sheet under his control at the time must be treated as in his possession, notwithstanding the interest his employers may have had in it." . . . . .

"A large number of the copies, according to the testimony, were upon a shelf." . . . . .

"And he [the defendant] obtained these copies for the purpose of labels. They were found in the store where he was and under his charge."

"Now, I repeat what I have said, that every sheet under his control (then under his control)—notwithstanding the interest that the firm of Sharpless & Sons may have had in them—every sheet thus subject to his control must be regarded, for the purposes of this suit, as in his possession, and for every sheet thus found in his possession, if you find for the plaintiff, and I see nothing that would justify you in not so finding."

This left nothing for the jury to consider but whether they would believe the testimony; if they did, it was a peremptory instruction to them to find a verdict against defendant of one dollar for every sheet found in the store of Sharpless & Sons. There is no contradiction in the testimony on the subject of the relation of the defendant, Thornton, to the possession of these 15,000 sheets of the photographs. Sharpless & Sons were a partnership in the city of Philadelphia, and large wholesale dealers in dry goods. Mr. Thornton was, according to his own testimony and that of Mr. Sharpless, employed by them somewhat in the character of a business manager, but his main business was, however, the purchasing of goods which were afterwards sold by that firm. Their place of business was a three or four story building, in which they had large quantities of textile fabrics stowed away for sale, and it was in the second or third story of this building that the sheets were found which are the subject of this suit. They were among other goods, and were to be used by pasting them upon parcels of dry goods, which was also often done at the dyers before the goods were brought to the business house for sale. That these copies were the property of Sharpless & Sons can admit of no doubt; that they were in their building, subject to their control and use, in the same manner as any of the other goods that they had there, is also clear, as well as the fact that the plaintiffs in this case so understood it.

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It appears from the evidence of Francis Schreiber, who was not, however, a member of the plaintiffs' firm, that he went, in company with his brother Henry, to the place of business of Sharpless & Sons, and sought an interview with Mr. Sharpless. In the course of the conversation which ensued he asked Mr. Sharpless where he got the pictures from, and he said "his man who had charge had got it at Queens," by his man evidently meaning Thornton, the defendant. Then after some conversation about the injury done the proprietors of the picture, Mr. Sharpless said that he did not intend to do anything wrong; whereupon witness then asked him whether he had any of them, to which the reply was, yes, he had a great many of them upstairs. The witness asked him whether they could have them, and Sharpless said, yes, they could have the copies.

This language is inconsistent with any other idea than that Mr. Sharpless considered the matter entirely under his control. This conversation with Mr. Sharpless occurred on the 8th day of May, in their place of business at the corner of Eighth and Chestnut streets; it was in the second story of the building, and Henry Schreiber, a brother of the witness, was also present.

In regard to this same conversation the witness, Francis Schreiber, was asked: "How came you to ask Mr. Sharpless if he would surrender any of the pictures?" His answer was: "I wanted to know if he had any. . . . That was my object in going there."

Henry Schreiber, one of the plaintiffs, was also sworn, and stated that he was present upon the Saturday morning when the conversation occurred with Mr. Sharpless as to which his brother Francis testified; that he had been there a few days before, upon which occasion he saw Mr. Thornton, who was emyloyed there to the best of his knowledge. He testified that Thornton showed him a picture; that he saw the place from which it was taken, a shelf, and that there were others, quite a package of them, on the shelf. He further testified that in the conversation on Saturday, Mr. Sharpless said: "Mr. Thornton has the sole charge of that; he gets up the labels, and gets everything that he thinks will be appropriate," or something to that effect, and that Mr. Sharpless also said that Thornton had shown him this picture before it was used, and he (Sharpless) told him to go ahead. He also states that Mr. Sharpless said that they had a lot upstairs, and that he (the witness) could have them all.

Mr. Thornton himself testified that he got up this plate, and ordered 15,000 copies to be made; that these copies were delivered to Sharpless & Sons; that the tickets were often put on the goods at the dyeing establishment, received afterwards by Sharpless & Sons, and sold to other parties. After some further testimony as to the details of this transaction, Mr. Thornton was asked: "Tell us what your business was then at that store of Sharpless & Sons." He replied: "I was employed there as the superintendent of the wholesale domestic department; I have the purchasing of all the goods, the making of the price, and seeing that they are sold." He testified in substance that these prints or copies were paid for by Sharpless & Sons; that he never paid out any money, but that they were paid for as other goods were by that firm in the course of business; that they were contracted for by him and paid for by Sharpless & Sons when the bill was sent to them.

The attempt was made to establish the fact that Thornton had the possession or control of these prints by showing that he was the man who first conceived the idea of getting up and using them in the business of Sharpless & Sons; that he did in effect order the photograph to be made, and only showed it to Mr. Sharpless after this was done. Thornton, however, states that before it was used, and a month before the time the prints were found at the store by the plaintiffs, that Mr. Sharpless had known about the photograph and copy; that he approved it, and that the bills were paid by his firm.

We do not see how Mr. Thornton, merely as an employe, although he may have had a principal place in that establishment, could be said to have had the possession of these prints when they were found by the plaintiffs in the store of Sharpless & Sons. In any other light that it can be viewed, that firm would be held to be in possession. An action of replevin could have been sustained against them for the possession of these goods, or an action of trover, if they had been the property of plaintiffs, on account of the possession of them by Sharpless & Sons. Sharpless & Sons could have done what they pleased with them; they could have ordered them thrown out and burned; they could have given them up, and they did offer to give them up, to plaintiffs. It was Sharpless himself who made this offer, and the plaintiffs obviously understood that Sharpless was the man with whom they were dealing all this time. Their first visits were to him; they talked the matter over with him; they recognized him as having control of the plates, of the prints, of the entire transaction; and it is impossible to conceive that Mr. Thornton had any other control over those sheets than he had over any piece of dry goods in the building. What he did during all the time in which this transaction occurred was as an employe of Sharpless & Sons; and any other clerk, porter, or salesman in that establishment, who handled these articles, or who had access to them and could use them upon packages of goods, had as much possession of them as Mr. Thornton, and any such person could have been sued and a recovery had against him as lawfully as against Thornton, so far as the matter of possession is concerned. What right of action might have been maintained against Thornton for actively copying, printing, selling, or exposing these prints for sale, is not now in question: the recovery here is based upon the fact of their being found in his possession.

Counsel for defendants in error, Schreiber & Sons, insist that the words "found in his possession" are to be construed as referring to the finding of the jury; that the expression means simply that where the sheets are ascertained by the finding of the jury to have been at any time in the possession of the person who committed the wrongful act, such person shall forfeit one dollar for each sheet so ascertained to have been in his possession. We, however, think that the word "found" means that there must

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be a time before the cause of action accrues at which they are found in the possession of the defendant. If, however, plaintiffs' view of the subject were tenable, the fact still remains that the only possession Mr. Thornton ever had of these prints was the possession of Sharpless & Sons, holding them merely as their employe, subject always to their order and control, and never with any claim of right in him to control them except in their service.

The instructions of the court to the jury, therefore, on this subject, were erroneous, and the testimony did not justify the charge. For this reason the judgment of the Circuit Court is reversed, and the case remanded with instruction to set aside the verdict, and for further proceedings in accordance with this opinion.

PATENT CASE.

FRANCIS MUNSON, Appellant,

v.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND THE COMPTROLLER THEREOF.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND THE COMPTROLLER THEREOF, Appellants,

v.

FRANCIS MUNSON.

Decided February 13, 1888.

Where a bill in equity is filed for the infringement of letters patent granted for a "new and useful improvement in preserving, filing and cancelling bonds, coupons, certificates of stock, &c., in providing a book, with pages corresponding in size, style and number with the bonds, &c., on which pages the said bonds, &c., when paid, are attached and preserved; and it appears from the proof that it is quite clear that in the state of previous knowledge upon the subject, there was no patentable novelty in the plaintiff's scheme, the bill must be dismissed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

ROYAL S. CRANE for Munson.

FREDERIC H. BETTS for Mayor, etc., of N. Y.

STATEMENT.

This was a bill in equity by Francis Munson against the Mayor, Aldermen and Commonalty of the City of New York, and the Comptroller of the City, for the infringement of letters patent granted to Munson on April 2, 1867, for "new and useful improvements in preserving, filing and cancelling bonds, coupons, certificates of stock, &c.," consisting, as described in the specification, "in providing a book or other register with pages corresponding in size, style and number with the bonds, coupons, certificates, &c., to be used, on which pages the said bonds, coupons or other certificates, when paid, are pasted or otherwise attached, and thus preserved and cancelled, as hereinafter more fully explained."

The specification, then, after observing that bonds and coupons, when paid, are usually either filed away or destroyed, and that, before or after being paid, they are often lost or stolen, by which the community is constantly being defrauded more or less, proceeded as follows: "To prevent this, I have invented a system of preserving, filing and cancelling such documents, which system will not only prevent such fraudulent practices, but also present at all times a full and perfect history or record of all transactions in relation to each and all of said documents. To accomplish this, I provide a book or set of books, having each page printed or ruled to correspond in size and style with the bond and its coupons, or other document, whatever it may be, with a heading showing the number, date when issued, to whom issued, when and where payable, amount, what issued for, rate of interest and when and where payable, together with such other facts as may be necessary to form a perfect record of the document. The pages are numbered consecutively the numbers corresponding to the numbers on the bonds or other documents. When any of the coupons are presented and paid, they are cancelled and then pasted or otherwise secured in their proper place upon the page, each place for them being numbered. When the bond itself is paid, it is likewise attached in the place on the page provided for it. If the holder should by any means be dispossessed of one or more of the coupons or bonds, upon presentation of the proper evidence, he would be paid, but not having the coupon or bond to surrender, there would be entered in its place upon the page a record of the facts in the case, so that if at any future time said coupon or bond should be presented for payment by a person not entitled to it, the record of all the facts relating to it would be ready at hand, and could be referred to at once by examining the proper page. By this method of arranging them, the number is always an index, so that if it is desired at any time to ascertain any fact in relation to any particular bond or its coupons, it is only necessary to turn to the page having the same number. In case a large series of bonds or certificates are used, several books would be required, and in that case the pages of each succeeding book would commence with the number next following that of the last page of the preceding volume, so as to make the numbers of the pages continuous from the beginning of the first book to the ending of the last. It will, of course, be understood that each separate set or series of bonds, certificates of stock, or other similar documents, will require a set of books specially prepared for them to correspond with the peculiar character of the document, the system or general plan, however, being the same in all cases, the details only being varied to suit the circumstances of the case."

The patentee claimed as his invention: "1. The preserving, filing and verifying of bonds, coupons, certificates and all similar documents by the means and in the manner substantially as herein set forth. 2. The book or register, constructed and used as and for the purposes set forth."

The defences set up in the answer were that the plaintiff was not the first and original inventor of the alleged improvement; that long before his alleged invention it was known to and used by William E. Warren and three other persons named, all residing in the city of New York; that the defendants had made no profits from its use; and that it was not patentable. The plaintiff filed a general replication.

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By the evidence taken in the case, it appeared that from 1872 there had been used, in the office of the comptroller of the city of New York, books like those described in the plaintiff's patent, except that the coupons were pasted on each alternate page and the bond on the opposite page; and that as early as 1853 Warren devised and used books for preserving the coupons of a railroad company, in which all the coupons payable on the same date were pasted in succession in the order of the numbers of the bonds to which they belonged, in ruled spaces of the proper size, above which the numbers of the coupons and of the bonds had been previously written or printed, and with a description of the bonds and the date of payment of the coupons written at the beginning of each series of coupons payable at the same date, but the bonds themselves were not pasted in, except a single one at the beginning of each book.

Upon the pleadings and proofs, the circuit court held that the plaintiff was the first and original inventor of the improvement, and that the patent was valid; and entered an interlocutory decree in his favor for an injunction and an account. 18 Blatchford, 237. The case was then referred to a master, who reported that upon the evidence taken before him (which need not be stated), the plaintiff was entitled to recover the sum of $6,202.40 as profits. Exceptions taken by the defendants to his report were sustained. 21 Blatchford, 342. A final decree was entered, awarding to the plaintiff the sum of six cents damages, and ordering that the costs before the interlocutory decree be paid by the defendant, and the costs since that decree by the plaintiff. Both parties appealed to this court.

Mr. Justice GRAY, after stating the case as above reported, delivered the opinion of the court.

What the plaintiff, in different parts of his specification, calls his "improvement," his "system," and his "invention," consists in providing one or more blank books, resembling common scrap-books, of which each page will hold a bond and its coupons, and has a heading describing the bond, and all the pages are numbered and ruled into spaces, in which the bonds and the coupons, on being presented and paid, may be pasted in the order of their numbers—the bonds on the successive pages, and the coupons of each bond on the same page with it—or, when any bond or coupon is paid without being surrendered, memoranda concerning it may be made. The claim is for the so preserving, filing and verifying of the bonds and coupons, and for the book so constructed and used.

If upon the face of the specification this could be considered as an "art, machine, manufacture or composition of matter," within the meaning of the patent laws (upon which we express no opinion), it is quite clear that, in the state of previous knowledge upon the subject, there was no patentable novelty in the plaintiff's scheme; inasmuch as the only difference between it and the earlier scheme of Warren was that in Warren's books there was no place for the bonds, and the coupons were grouped according to their dates of payment, instead of being grouped together with the bonds to which they respectively belonged. The providing of spaces for the bonds, and the change in the order of arrangement of the coupons, cannot, upon the most liberal construction of the patent laws, be held to involve any invention.

Decree reversed, and case remanded to the circuit court, with directions to dismiss the bill, the original plaintiff to pay the costs in both courts.

THE DISTRICT OF COLUMBIA
v.
AUGUSTA McBLAIR ET AL.

Decided January 23, 1888.

1. A decree of the General Term of the Supreme Court of the District of Columbia, reversing a decree of the Special Term, and remanding the cause to the Special Term to be further proceeded with as the parties might be advised, is not a final adjudication.

2. The District of Columbia purchased of the original purchaser at a chancery sale the property in controversy, and paid therefor certain market-stock bonds, the proceeds of which, though not passing through the hands of the trustee of the court making the original sale, were yet applied to the object sought by the bill. *Held*, that the District is entitled in equity to a conveyance from the trustee on payment of the difference (with interest) between the price agreed to be paid for the property by such original purchaser, and the proceeds of the bonds so applied as aforesaid.

Appeal from the Supreme Court of the District of Columbia.

HENRY E. DAVIS for appellant.

J. J. DARLINGTON for appellees.

Mr. Justice MATTHEWS delivered the opinion of the court.

An objection is taken by counsel for the appellees to the consideration of the merits of the present appeal, on the ground that the matter involved therein had been previously and finally adjudged against the District of Columbia by the decree of the general term of February 4, 1876, reversing the decree of the special term directing a conveyance of the title of the premises in controversy to the appellant. It is alleged that this decree was final against the District of Columbia upon the right claimed in its petition, from which no appeal having been taken, it has thereby become conclusive. The point, however, is not well taken. The decree in question reversed the decree of the special term of August 7, 1875, and remanded the cause to the special term to be further proceeded with as the parties might be advised. It did not direct a dismissal of the petition of the District of Columbia, and was, therefore, not a final adjudication upon its right to some relief in accordance with the prayer of the petition.

Proceeding to consider the appeal upon its merits, find that we it involves but a single question, to wit, whether, because the District of Columbia has not fully paid the consideration for the conveyance made by McBlair and wife of the title to the premises in controversy, it has lost all right to obtain from the trustee, by order of the court, a conveyance of the title. The auditor, to whom the matter had been referred, reported that the market-stock bonds delivered by the District of Columbia to Mc-

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Blair as the consideration for his deed produced only $22,700. It seems to be assumed in this report and elsewhere throughout the case that the cash proceeds of these bonds were applied by McBlair to the repair and improvement of the buildings upon the remaining lots, to the benefit of the estate and the beneficiaries under the will, in the same manner and to the same extent as if those proceeds had gone into the hands of the trustee and been directly applied by him according to the order of the court. This certainly constitutes an equity in favor of the appellant to the extent of these payments, entitling it to have them credited upon McBlair's notes in the hands of the trustee, in satisfaction of that much of the original amount due on account of the sale. The appellant also has a further equity, on payment to the trustee of the additional amount necessary to make good the whole amount of the agreed price of the property sold, to have the McBlair notes cancelled and a conveyance of the title by the trustee, discharged of all lien, on account of unpaid purchase money. This amount is the difference between $24,521.50, for which the property was sold to McBlair, and $22,700, the amount of cash actually received from the proceeds of the bonds, being $1,821.50, with interest thereon from the time of the sale to McBlair. It is, indeed, contended on the part of the District of Columbia that the consideration agreed upon between it and McBlair has been fully satisfied by the delivery of the bonds, the guaranty that they should produce ninety-seven cents on the dollar being denied as a matter of fact. The auditor, however, has reported otherwise upon the fact, and the record does not furnish us with a means of testing the accuracy of his conclusion. We are of opinion, however, independently of that controversy, that the District of Columbia cannot avail itself of any agreement with McBlair to accept bonds instead of cash. Its obligation as the assignee of his bid is to pay his notes in full in money according to their tenor, and it is, therefore, bound to make good the difference between what McBlair actually received from it in money and the amount called for by his notes. Any re-sale of the property ordered by the court should be only in case of a default on the part of the appellant in making this additional payment within some reasonable time to be fixed by the court. The decree ordering a re-sale, without regard to the previous payments, and the right to make such additional payments as should be ascertained to be due and required to be paid, was therefore erroneous.

Counsel for the appellees contend in argument that the application of the proceeds of the sale to repair and improve the buildings upon the unsold portions of the real estate, was not a legitimate investment of such proceeds within the purview of the third section of the Act of Congress of August 18, 1856, which requires that the proceeds of such sale shall be held under the control and subject to the order of the court, and invested under its order and supervision upon real and personal security or in government securities. But that question was finally passed upon by the court below in the decree of May 10, 1869, directing the sale for the purpose prayed for. This decree, it is true, directs that the proceeds of the sale be brought into court to abide its future order, but the actual application of the proceeds of sale to the improvement of the other property was distinctly brought to the notice of the court by the petition of the District of Columbia, and was assumed as rightful throughout the whole history of the case, without objection from any of the parties in interest. It would be grossly inequitable to permit the appellees, at this stage of the cause, to insist upon the objection. The discretion to make such an investment of the proceeds of the sale are conferred upon the Supreme Court of the District of Columbia by the Act of Congress authorizing the sale. The District of Columbia, as purchaser from McBlair, of course, had full notice that the purchase money was unpaid, and was bound as purchaser to see to the application of its own payments; but as no question has been made upon the fact that the money paid by it has gone to benefit and improve the estate of the appellees in the manner and to the extent contemplated by the court in ordering the sale of the unimproved lots, the appellant has a right, upon payment of the additional amount due from McBlair on account of the sale, to have a conveyance, under the order of the court, by the trustee.

The decree of the Supreme Court of the District of Columbia appealed from is, therefore, reversed, and the cause remanded, with directions to ascertain the amount still due from McBlair on his notes, given on account of his purchase, after crediting thereon the amount realized by him from the sale of the market-stock bonds; and, on payment of the amount thereof by the appellant, to decree a conveyance of the title of the parties to this cause by the trustee to the District of Columbia; and in default of such payment, within a reasonable time to be fixed therefor, to direct a resale of the said premises for the satisfaction thereof. And it is so ordered.

UNITED STATES COURT OF CLAIMS.

Reported by Wm. Stone Abert.

GEORGE W. MELVILLE
v.
THE UNITED STATES.

1. Officers of the Navy, during their absence on public duty, may allot towards the support of their families an amount not exceeding one-half of their pay.

2. The officer cannot authorize such allotment to exceed one-half of his pay, except by special permission of the Secretary of the Navy.

3. Where the amount alloted by an officer to his wife has been without his consent increased by order of the Secretary, the excess so paid may be recovered by the officer, and he is entitled to judgment for that amount.

Robert B. Lines for claimant.

Francis P. Dewees for the United States.

Facts.

The claimant was a passed assistant engineer from April 28, 1879, to March 3, 1881, and from the latter date he was chief engineer until Sep-

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cember 1, 1882. In June, 1879, the claimant made and registered, in accordance with the regulations of the Navy, an allotment of his pay to the amount of $90 a month, to be paid to his wife, Mrs. Hettie B. Melville, during his absence from his family on public duty for a period of thirty-six months. On the 3d of June, 1881, during the absence of the claimant on a distant voyage, and without his consent or knowledge, the Secretary of the Navy addressed the following communication, signed by him, to the Fourth Auditor:

NAVY DEPARTMENT, *June* 3, 1881.

You are authorized to increase the allotment of Chief Engineer George W. Melville, on the *Jeannette*, from $90 to $140 per month, commencing with the May payments.

Very respectfully,

Secretary of the Navy.

Hon. CHARLES BEARDSLEY,
Fourth Auditor.

In pursuance of said communication, the defendants paid to said Hettie B. Melville, wife of the claimant, during the continuance of his said allotment, without his consent or knowledge, beyond the amount of his said allotment, $650, and withheld the same and still withholds it from the claimant's pay or salary due to him by law.

RICHARDSON, Ch. J., delivered the opinion of the court.

Allotments by officers and others of the Navy from their pay, towards the support of their families or other relatives during absence on public duty, are by the Navy Regulations governed by minute and strict directions and requirements.

They must not exceed one-half the pay of the person, except by special permission of the Secretary of the Navy. After having been signed, they must have the approval of the commanding officer of the vessel or station to which the person is attached, and will be registered by the pay officer of such vessel or station; they must be executed in duplicate, and in the case of commissioned or warrant officers one part is transmitted by the pay officer who has registered them to the Fourth Auditor's Office, and they are subject to various other regulations. (Navy Regulations of 1876, section 11, p. 124.)

The claimant, about to leave in the *Jeannette*, on the Arctic exploring expedition, made an allotment of $90 a month from his pay to his wife for the term of three years, in conformity with the regulations. This he had a right to do, and as it was less than half his pay, neither the Secretary of the Navy nor anybody else had a right to interfere with it. It was registered with the Fourth Auditor, whose only authority in the matter was to audit an account monthly for $90 in favor of Mrs. Melville. It was also registered with the pay officer of the *Jeannette*, from whom the claimant had a right to draw the balance of his pay.

During his absence, and without his consent or knowledge, the Secretary of the Navy undertook to "authorize" the Fourth Auditor to increase the amount of the allotment $50 a month, that is, to $140 a month instead of $90, and thereby the defendants were led to pay Mrs. Melville six hundred and fifty dollars beyond the claimant's allotment. The Secretary of the Navy had no legal power to give such an authorization, and the Fourth Auditor, whose duty in the premises was fixed by law and the regulations, above and beyond the control of the Secretary, derived no authority from it. The order was not only an interference with the rights of the claimant, whose salary was wholly within his own control to appropriate as he saw fit, but was in contravention of the duties and obligations of the pay officer of the *Jeannette*, who under the law was authorized to pay the claimant all his salary above the $90 allotted by him, and in the distant region where he was it could not be known to him that any larger sum was deducted by the Fourth Auditor and paid to some one else.

The claimant is entitled to recover the sum of $650, withheld from his salary, and judgment will be so entered.

The Custody of Treasury Drafts in Payment of Judgments of the Court of Claims.

The following rule, established recently by Hon. M. J. Durham, First Comptroller of the Treasury, will be of interest to lawyers practicing before that court:

(1) Judgments rendered prior to December 1, 1886; drafts to care of attorney of record.

(2) Judgments rendered subsequent to December 1, 1886:

(*a*) If the case was taken to the court on the adverse action of the accounting officers, the draft may be sent to the care of the attorney of record on his filing a proper power of attorney to receive it.

(*b*) But if the case was taken originally to the court when it might have been presented to the accounting officers, the draft is not to go to the attorney of record; but, on his filing a proper power of attorney authorizing it, he may receive a draft for his commissions, not exceeding ten per cent. of the amount to be paid.

(*c*) If the case was without the jurisdiction of the accounting officers, the court possessing exclusive original jurisdiction, the draft will go to the care of the attorney of record.

LOUISVILLE LAW AND EQUITY COURT.

LENA NUNEMAN v. FRANK NUNEMAN.

Opinion by Hon. Sterling B. Toney, Judge.

Delivered February 13, 1888.

1. In a suit brought by a wife against her husband for divorce on the ground of cruel and inhuman treatment, the husband may recriminate that she has been guilty of adultery.

2. The doctrine of recrimination applicable to suits for divorce, and the several offences which by the statute constitute grounds of divorce, are pleadable in bar to such suits, the one to the other, within the principle of the doctrine.

3. When both parties are found guilty of any of the enumerated statutory causes of divorce, the bill should be dismissed.

This action is submitted upon the pleadings and proof for final judgment. In her petition the plaintiff alleges cruel and inhuman treatment by her husband, as the statutory ground upon which she demands a divorce. In his

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answer, the defendant alleges adultery and lewd and lascivious conduct as the grounds upon which he demands a divorce.

The proof clearly establishes the charges against both parties, but fails to show that the delinquence of either is attributable to the fault of the other

At common law there was no supervenient grounds for divorce *a vinculo matrimonii*, not even adultery. To dissolve the marriage contract absolutely, a special act of parliament was necessary. There were certain canonical impediments and legal disabilities existing *prior* to entering into the marriage covenant that rendered it void *ab initio*; but for nothing occurring after marriage could its bonds be dissolved by judicial decree. Adultery or cruelty, by either husband or wife, was a ground for divorce *a mensa et thoro*, which simply separated the parties for an indefinite time (but always in the hope of reconciliation), without disturbing the marital relations as to either person or property. They were still husband and wife, with all the privileges and obligations of that relation save that of living together; the wife being still under the disabilities of coverture.

The wisdom of this doctrine of the common law is admirably presented by Sir Wm. Scott, the great legal oracle on this subject, in Evans v. Evans, 1 Hagg. C. R. (4 Eng. Ec. R.), 35, 36. "The repugnance of the law," said he, "to dissolve the obligations of matrimonial cohabitation may operate with great severity upon *individuals*, yet it must be carefully remembered that the general happiness of the married life is secured by its indissolubility. When people understand that they *must* live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands and wives, for necessity is a powerful master in teaching the duty which it imposes. If it were once understood that upon mutual disgust, married persons might be legally separated, many couples who now pass through the world with mutual comfort, with attention to their common offspring and to the moral order of society, might have been at this moment living in a state of mutual unkindness, in a state of estrangement to their common offspring, in a state of most licentious and unreserved immorality. In this case, as in many others, the happiness of some individuals must be sacrificed to the greater and more general public good."

But whether dictated by a wise or an unwise public policy, by the general statutes of this State, there are thirteen causes of divorce *a vinculo matrimonii;* two to both parties, irrespective of any fault on the part of either; six to either party not in fault; three to the wife when not in like fault; and two to the husband. Genl. Stats., ch. 52, Art. 111, page 523.

In the case at bar, the statutory cause of cruel and inhuman treatment, afforded the wife when not in like fault, is charged by the plaintiff in her petition against her husband, the defendant, and is irrefragibly established by the proof; while the statutory ground in favor of the husband, of adultery and lewd and lascivious behavior, proving her to be unchaste, which the defendant charges against his wife, the plaintiff, in his answer, is proven with equal clearness; and both pray for a divorce, each against the other. They are both grievously in fault, and should be dismissed from a court of equity and be left to find, if they can, sources of mutual forgiveness in the humiliation of their mutual guilt. In Chambers v. Chambers, 1 Hagg. Cons., page 439, where the defendant wife pleaded in bar to a suit against her, charging adultery, the cruelty of the plaintiff husband, Lord Stowell said: "It is certain that the wife has a right to say, 'You shall not have a sentence against me for adultery if you are guilty of the same offence yourself.' The received doctrine of compensation would have that effect, because both parties are *in eodem delicto;* but this is not so in recrimination of cruelty. The *delictum* is not of the same kind. If the wife was the *prior petens* in a suit of cruelty, I do not know that she would be barred by a recrimination of that species, for the consideration would be very different." Referring to this case of Chambers v. Chambers, Mr. Justice Field, of the Supreme Court of California, now of the Supreme Court of the United States, in Conant v. Conant, 10 Cal, 249, said: "The soundness of the distinction thus taken by Lord Stowell was doubted in Dillon v. Dillon, 3 Curt. Ecc., 86, when Dr. Lushington said, in referring to that decision, 'I candidly say I entertain doubts whether the reason given is the most satisfactory that could be adduced, because if this arises out of the difference in the nature of the two offences, it follows, *e converso*, that when the wife has brought a suit on account of cruelty, the husband cannot plead her adultery in bar, a proposition which I am not aware has ever been laid down in these courts.'"

Although the distinction alluded to was asserted and maintained in the ecclesiastical courts, which possessed only authority to decree a divorce *a mensa et thoro*, it was the settled course of parliament in determining on the propriety of granting a petition of divorce *a vinculo matrimonii*, to allow both adultery and cruelty to be pleaded in recrimination as an absolute bar. This principle was insisted on before the House of Lords by Lords Brougham and Campbell, in the matters of Simmon's Divorce Bill, 12 Cl. & Fin., 339.

In Conant v. Conant, *supra*, Judge Field further said (and it should be observed that was a suit by the wife for divorce on the ground of cruelty and abandonment, to which the husband filed an answer charging adultery): "In this State, the statute has specified certain acts or conduct which shall constitute grounds of divorce, and so far as the matrimonial contract is concerned, the courts cannot distinguish between them, whatever difference there may be in a moral point of view. The several offences must, therefore, be held equally pleadable in bar to the suit for divorce—the one to the other within the principle of the doctrine of recrimination." Thus the doctrine was established in Conant v. Conant, following the principles and precedents of the English Parliament, which in England was the only forum having power to grant a divorce *a vinculo matrimonii;* that in order to obtain a divorce *a vinculo matrimonii*, the applicant must be *an innocent party* without reproach; and that however guilty the defendant, if the plaintiff is chargeable either

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with similar guilt, or an offence to which the law attaches similar consequences, relief must be denied to both.

And so in Nagel v. Nagel, 12 Mo., 53, it was held under a statute similar in its provisions to our general statutes, that when both parties were found guilty of any of the enumerated statutory causes of divorce, the bill should be dismissed. In that case, as in the case under submission, the evidence sustained the charge of adultery against the wife, and cruel and inhuman treatment on the part of the husband.

To the same effect is Ryan v. Ryan, 9 Mo., 539. And in Mattox v. Mattox, 2 Ohio, 234, the doctrine of recrimination was applied, the proof showing adultery on the part of the plaintiff. It is sufficient to call into exercise the doctrine of recrimination as a bar to a suit for divorce, if the acts of mutual delinquence are attended with similar legal consequences; that is to say, if they be both grounds of divorce *a vinculo matrimonii*, although they may be dissimilar in a moral point of view. In this case both parties are seeking the annulment of a legal contract, the covenants of which both have violated; a contract that should be far more binding upon the consciences of the parties to it than any ordinary civil contract, for upon its observance and inviolability depend the peace and purity of private homes, as well as the public weal and honor of the State.

The English and American doctrine on this subject is admirably analyzed and presented by Mr. Bishop in the 2d volume of his excellent treatise on Marriage and Divorce, sec. 80 *et seq.*

I am aware that different views from those embodied in this opinion were expressed by Judge Goldthwaite in Richardson v. Richardson, 4 Porter (Ala.), 467. It is believed, however, that the attention of that very eminent jurist was not directed to either the reason, history or authorities of the rule. It might be said, however, that as both the plaintiff and defendant were shown by the proof to be guilty of such acts and conduct as constitute under the statute *causes of divorce*, a judgment should be entered in favor of and against each party. Aside from the manifest impropriety of such a judgment, and the evil tendencies of such a doctrine as encouraging the commission of the acts that constitute the grounds of divorce under the statute, the Court of Appeals of this State, in Dejarnet v. Dejarnet, 5 Dana, 500, (opinion by Chief Justice Robertson,) has said that "a decree granting a divorce to both parties is anomalous and unauthorized."

It results that relief should be denied to both parties, and that the action should be dismissed.

NEW YORK COURT OF APPEALS.

ELLEN T. HAYES, Respt.
v.
CHARLES J. NOURSE, JR., Appt.

Decided December 23, 1887.

Payment of a judgment will not prevent a subsequent appeal therefrom to the court of appeals, unless the payment was by way of compromise or with an agreement not to take or pursue an appeal.

Motion to dismiss an appeal from a judgment of the General Term of the New York Common Pleas, affirming a judgment of the Trial Term in favor of plaintiff in an action to recover back money paid on account of the purchase price of land, the title to which was alleged to be defective.

Statement by DANFORTH, J.

This is a motion to dismiss the appeal as irregular and void, for the reason that the judgment for which said appeal purports to be taken was satisfied of record before the service of notice of appeal.

Judgment was recovered by plaintiff against defendant in the court of common pleas on April 4, 1887, for $3,528.26, from which the defendant took an appeal to the general term of said court, where the judgment was affirmed, and on June 10, 1887, a judgment of affirmance thereof and for $84.24, costs of said appeal was entered.

On June 15 the defendant voluntarily paid both of said judgments, applied to plaintiff's attorney for and received satisfaction pieces thereof, and on the same day filed the same and caused said judgments to be satisfied of record. No process had been issued nor proceeding taken to enforce payment of said judgments.

On September 27, 1887, the defendant served notice of appeal to this court.

A. P. HILTON, for respondent, for the motion:

The judgment having been satisfied of record by the voluntary act of the defendent it was extinguished for all purposes. The parties were out of court and there was nothing to appeal from; consequently the notice of appeal was irregular and void. Hatch v. Cent. Nat. Bank, 78 N. Y., 489.

The cases of Sheridan v. Mann, 5 How. Pr., 201, and Schermerhorn v. Wheeler, 5 Daly, 472, will probably be relied on by the appellant to defeat this motion. In the latter case the effect of the satisfaction of judgment upon the right of appeal was not before the court; and, assuming that the latter portion of the opinion could be tortured into an expression of opinion on that point, it was *obiter dictum*.

In Sheridan v. Mann, if the decision could by any possibility be construed to hold that after the satisfaction of a judgment an appeal would lie therefrom, it is not controlling, as this question was not before the court.

STRONG & CADWALADER, for appellant, *contra:*

A voluntary payment of an adverse judgment is not a waiver of a right to appeal from the same. Champion v. Plymouth Cong. Society, 42 Barb., 444; Clowes v. Dickenson, and Dyett v. Pendleton, 8 Cow., 332, 328; Burch v. Newbury, 4 How. Pr., 145; Wells v. Danforth, 1 Code Rep. N. S., 415; Schermerhorn v. Wheeler, 5 Daly, 473.

It is only when a party accepts some benefit under a judgment or order that he waives his right to appeal from it. Re N. Y. C., etc., R. R. Co., 60 N. Y., 112.

Docketing a judgment is only essential to make a judgment the lien upon the land of the judgment debtor. Code, section 1260; Sheridan v. Andrews, 49 N. Y., 478; Whitney v. Townsend, 67 N. Y., 40.

Judgment can be enforced at any time after the judgment roll is filed. Code, section 1239.

By the payment and entry of satisfaction of

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the judgment the unsuccessful party does not lose the right to appeal. Schermerhorn v. Wheeler, 5 Daly, 473; Dickensheets v. Kaufman, 29 Ind., 151: Hill v. Starkweather, 30 Ind., 434; Edwards v. Perkins, 7 Oreg., 154.

This court has held (in construing a stipulation under which it was claimed a party had waived a right to appeal, given by law) that the facts should be very clear and should leave no doubt of the intention of the party to cut himself off from the right of appeal before it should be so construed. Stedeker v. Bernard, 93 N. Y., 589.

DANFORTH, J., delivered the opinion of the court:

The defendant's practice in paying the judgment before appealing from it is not to be condemned. It is rather to be encouraged. A party who recovers at the trial term and, against his adversary's appeal, sustains the recovery at the general term, might fairly be deemed entitled to the fruits of his action without further delay.

The law, however, allows one more appeal; but although it is taken the successful party may nevertheless enforce his judgment by execution and so collect its award, unless the defeated party secures its ultimate payment by a deposit of money or an undertaking. Why may he not simplify the matter by placing the funds at once in the hands of the party who, if the appeal fails, will be ultimately entitled to them? By so doing he will save the costs of execution and do no harm to his creditor. We think he should not, by a temporary submission to the decision of the court, be placed in a worse position than if he awaited execution and settled it with sheriff's fees.

In Dyatt v. Pendleton, 8 Cow., 326, an execution had in fact issued; but the court held that even a voluntary payment of the judgment would have been no reason against a writ of error, and in a subsequent case (Clowes v. Dickenson, 8 Cow., 328) Senator Spencer, referring to the decision just cited, says: "I feel confirmed on reflection that, no matter how the money is paid or collected, this cannot affect the right to try error or appeal."

To the same effect are many subsequent decisions, and it must be deemed too well settled by authority to require further discussion, that a party against whom a judgment has been rendered is not prevented from appealing to this court by the fact that he has paid the judgment, unless such payment was by way of compromise, or with an agreement not to take or pursue an appeal. 1 Code Rep. N. S., 415, Ct. of Appeals, 1852; Sheridan v. Mann, 5 How. Pr., 201; 42 Barb., 341.

The statute giving the right to appeal only requires that the judgment in question shall be final; Code, section 190; that the appeal shall be taken within one year after it is entered, section 1325; and, anticipating such a case as that now presented, provides that if the judgment appealed from is reversed, the appellate court may make or compel restitution. The same rule prevailed before the Code, and it was applied whether the judgment was paid before or after writ of error brought. The only difference was in the manner of proceeding to inform the court of the facts on which the right to restitution depended. Tidd. Pr., 1033, 1034; Sheridan v. Mann, *supra*.

The appellant's practice has been regular and the motion to dismiss the appeal should be denied, with $10 costs.

All concur, except RAPALLO, J., absent.—*Central Reporter.*

Pamphlet Received.

The Trial of the Judgment; a Review of the Anarchist Case. By Gen'l M. M. Trumbull. Price 25 cents. Published by The Health and Home Publishing Co., February, 1888, No. 225 Dearborn St., Chicago, Ill.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

February 25.

11033. R. R. Perry, executor estate of Harriet McCeney, v. Edgar P. McCeney et al. Com. sol., R. R. Perry.

February 27.

11034. John and Wm. C. Burns v. Rufus K. Helphenstine et al. Com sols., Cole & Cole.

11035. John Foller, upon petition of Joseph Foller, trustee. Com. sols., Tippett, Clendenin, Fullerton and Bell.

11036. Alfred Richards et al. v. Charles Medford et al. Com. sol., A. B. Williams.

February 28.

11037. Jno. George Henry et al. v. Sophia Bouret et al. Com. sol., J. A. Maedel.

11038. Frederick A. Dyser v. Gracie P. Campbell. To sell part lot. Com. sol., T. F. Miller.

11039. Alverta Leathers v. Robert B. Leathers. For divorce. Com. sol, J. Ambler Smith.

February 29.

11040. Eleazar Harmon, trading as E. Harmon & Co., v. James Fitzpatrick et al. Creditor's bill to enforce judgment at law. Com. sols., Wilmarth and Storrs.

March 1.

11041. Sarah L. Carrigan v. Daniel Carrigan. For divorce. Com. sol., E. B. Hay.

11042. Lemon T. Wheeler v. Kate M. Wheeler. For divorce. Com. sol., E. B. Hay.

11043. Jessie E. Weaver v. Jessie F. Campbell. For partition by sale. Com. sol., H. B. Davidson.

March 2.

11044. Wm. H. Main et al. v. Daniel E. Hoadly et al. To dissolve partnership. Com. sol., W. A. Cook.

11045. Frank H. Over, executor of will of Henry Smith, v. Malvina Eaves. To construe will. Com. sols., Birney & Birney.

11046. Joseph Foller, receiver, v. Joseph Foller, trustee, et al. To sell all estate of John and Elizabeth Foller, and for investment of proceeds. Com. sols., Tippett, Clendenin, Fullerton and Bell.

11047. Mary O'Brien v. Walter Green et al. For injunction. Com. sols., Clarke and Cahill.

March 3.

11048. Annie Miller v. Daniel Miller. For divorce. Com. sol., C. Carrington.

11049. Turman J. Shadd v. Howard Holmes et al. To sell lot. Com. sol., James S. Smith.

CIRCUIT COURT.—New Suits at Law.

February 27.

28482. Charles E. Locke v. Eloi Sylva. Damages, $20,000. Plffs atty, E. A. Newman.

28483. Same v. Henry Pierson et al. Damages, $20,000. Plffs atty. Same.

28484. Alfred L. Willson et al. v. Thomas E. France. Account, $170. Plffs attys, Garnett & Mackall.

February 28.

28485. Abraham Depue et al. v. Wm. Frank Walker et al. Judgment of Justice Mills, $88.53.

28486. James E. Willett v. Ann W. Queen. Judgment of Justice Davis, $39.52.

28487. Joseph R. Hertford v. George C. Lewis. Notes, $200. Plffs attys, Wilmarth and Storrs.

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28488. John Baum v. John F. Housam. Judgment of Justice O'Neal, $40.
28489. James W. H. Lovejoy v. Oscar H. Coumbe. Check, $105. Piffs atty, B. G. Lovejoy.

March 3.

28490. Jacob T. Phillips v. Wm. D. Earle. Certiorari. Defts attys. Miller and Taylor.
28491. Moses Stearman v. The B. & O. R. R. Co. Damages, $30,000. Piffs atty, F. T. Browning.

PROBATE COURT.—Justice Cox.

March 2.

Estate Susan Kengla. Will admitted to probate.
Estate E. D. Lowry. Order of sale.
Estate Joseph Brooks. Reference to special auditor.
Estate Mary Johnson. Executors bonded and qualified.
Estate Richard H. Trunnel. Petition for letters filed by Wm. H. Tenney, creditor.
Estate Maria E. Rodier. Letters granted Sarah E. A. Gibson; bond, $100.
Estate Margaret Carter. Letters issued to M. J. Colbert and E. Sutherland; bond, $1,000.
Estate Thos. Duke. Letters granted Sallie D. Duke; bond, $1,000.
Estate Wm. Eckstein. Letters granted Anna L. Eckstein; bond, $1,200.
Estate Michael T. Keliher. Letters granted Mary E. Keliher; bond, $1,000.
Estate Susan Walker. Letters granted Benjamin Butterworth; bond, $2,000.
Estate James McGrann. Letters granted H. F. McGrann; bond, $4,000.
Estate Wm. Clabaugh. Inventory of personalty, amounting to $318.05, filed.
Estate Bernard Overman. Order allowing sale of decedent's interest in the firm of White & Overman to surviving partner.
First and final accounts were passed in the following estates: Nora Maclay, James Godden, Bernard Bergling, Mary E. Brown, David Hunter, Ellen Owen, John W. Kindt, Sebastean de Lassa, and Baron Kessel.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rebecca Cooper**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of February, 1888.

10 WM. BRYAN, Ex'r, 608 Penn. ave.

No. 2879. Ad. D. 13. E. H. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 23th day of February, 1888.

Carrie C. Davis et al. v. Robert V. McKenny et al. } No. 10,968. Docket 27.

On motion of the plaintiffs, by Mr. S. T. Thomas, their solicitor, it is ordered that the defendants, **Frederick C. Albright, Robert F. Pope, George E. Pope and Addie Talburt**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell the real estate of which Edward McKenny died seized, for the purpose of paying debts.

By the Court. W. S. COX, Justice, &c.
True Copy. Test: R. J. MEIGS, Clerk, &c.
10 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration c. t. a. on the personal estate of **Henry H. Kultz**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.

10 CHRISTIEN KULTZ, Adm'x c. t. a., 507 11th st. n. w.

No. 2926. Ad. D. 13. C. A. Walter, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity, March 1, 1888.

Mary Rose v. Margaret Cumberland et al. } 10,916. Eq. Doc. 27.

On consideration of the report of James M. Johnston, trustee, of the sale of part of lot 22, in square No. 534, particularly described in the proceeding, to William G. Stotter, for $1,050.00, cash, it is ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of April, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
10 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1888.

Georgeanna Deal v. James Henry Deal. } No. 10,895. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **James Henry Deal**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the grounds of adultery and wilful desertion for over three years before the filing of this petition.

By the Court. W. S. COX, Justice, &c
True copy. Test: R. J. MEIGS, Clerk, &c.
10 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1888.

R. J. Allen, Son & Co. v The Anglo-American Insurance Company. } No. 27,361. Docket 31.

On motion of the plaintiffs, by Birney & Birney, their attorneys, it is ordered that the defendant, **The Anglo-American Insurance Company**, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to condemn certain credits to the payment of a debt claimed by the said R. J. Allen, Son & Co. from said Anglo-American Insurance Compay.

By the Court. A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk.
10 By J R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of March, 1888.

W. G. Raymond v. Lucy Raymond. } In Equity. No. 10,816. Docket 27.

On motion of the plaintiff, by Mr. J. Ambler Smith, his attorney, it is

Ordered, that the defendant cause her appearance to be entered herein or on before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* from the defendant.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
10 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas A. Richards**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 14th day of February, 1888.
9 SARAH ANN RICHARDS, Ex'x, 1016 N. J. ave. s. e.
No. 2987. Ad. D. 13. J. J. Wilmarth, Proctor.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Henry Smith**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of February, 1888.
8 FRANK H. OVER, Ex'r, 424 1st st. s. e.
No. 2823. Ad. D. 13. Birney & Birney, Proctors.

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **William D. Fuller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.
10 ARTHUR MAC ARTHUR, Adm'r c. t. a.,
1201 N st. n. w., Washington, D. C.
No. 2278. Ad. D. 12. Wm. F. Mattingly, Proctor.

THIS IS TO GIVE NOTICE.
That the subscriber, of Albany, New York, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Cora Livingston Barnard Mercer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1888.
10 RICH'D VARICK DEWITT,
Executor of the last will and testament of
Cora L. B. Mercer.
No. 2986. Ad. D. 13. James Lowndes, Proctor, 1505 Pa. ave

THIS IS TO GIVE NOTICE,
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Agnes Maria Smith**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.
10 BLAIR LEE, Ex'r,
Cor. 4½ street and Louisana avenue,
No. 2935. Ad. D. 13. Washington, D. C.

THIS IS TO GIVE NOTICE.
That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Purcell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of February, 1888.
7 JOHN J. PURCELL, Adm'r, 1458 R. I. ave. n. w.
Wm. J. Miller, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
February 3rd, 1888.

In the case of Mary H. J. Bush and Willard Saulsbury, jr., Executors of Maria S Thomson, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter prevoius to the said day.

6 Test. DORSEY CLAGETT, Register of Wills.
No. 2722. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
February 23d, 1888.

In the case of Maria H. Steuart, surviving Executrix of the Estate of **Maria Hunter**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 23rd day of March, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

9 Test: DORSEY CLAGETT, Register of Wills.
No. 2556. Ad. D. 13. Chas. W. Dorsey, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
February 24th, 1888.

In the matter of the Estate of **Lydia S. Button**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Zachariah S. Buckler.

All persons interested are hereby notified to appear in this Court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
9 Test: DORSEY CLAGETT, Register of Wills.
No. 2949. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 10th day of February, A. D. 1888.

Charles A. Bradford et al., Complainants, v. **Anna Castell et al.,** Defendants.	No. 10,959. Equity Docket 27.

On motion of the complainant, by Messrs. Neill Dumont and Reginald Fendall, their solicitors, it is ordered that the defendants, **Anna Castell, William Nokes, George W. Nokes, jr., an infant, and Matilda C. Nokes, an infant,** cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest the defendants of any title to the lot of ground No. 26, and the south 20 feet 6½ inches, from front to rear, of lot 25, in square No. 990, in the city of Washington, District of Columbia, and remove from the complainant Charles A. Bradford's title thereto, a cloud thereon arising from a defect in a deed from Edward O. Castell and others to Barzilla C. Betts, dated September 24th, 1864, and recorded among the Land Records of said District, in Liber C. T. No. 55, fol. 84.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
7 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the matter of the Estate of **Polly Y. Brownell**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Temperance P. Reed.

All persons interested are hereby notified to appear in this Court on Friday, the 16th day of March, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

8 Test: DORSEY CLAGETT, Register of Wills.

F. D. McKenney, Proctor.

IN THE SUPREME COURT OF THE D'STRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the case of John Marbury, jr., Administrator c. t. a. of **Harriet H. Marbury**, late of Washington County, in the District of Columbia, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at eleven o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test. DORSEY CLAGETT, Register of Wills.

No. 2557. Ad. D. 13. J. Carter Marbury, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal Estate of **Bernard Overman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of February, 1888.

8 ELIZABETH OVERMAN, Adm'x, 937 M st. n. w.

No. 2964. Ad. D. 13. Wm. E. Edmonston, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Claugh**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of February, 1888.

8 EDWIN B. HAY, Adm'r, 1425 N. Y. ave.

No. 2989. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard Nichlas**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3rd day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3rd day of February, 1888.

8 GUY CARLTON, Adm'r, 1740 14th st. n. w

No. 2970. Ad. D. 13. Fillmore Beall, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBJA.

Holding a Special Term for Orphans' Court Business.

February 15h, 1888.

In the case of Noble D. Larner, Executor of **Margaret Kennedy**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney, duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test: DORSEY CLAGETT, Register of Wills.

No. 2588. Ad. D. 13. John B. Larner, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Otis P. G. Clarke**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of February, 1888.

8 CHAS. W. FITTS, Adm'r, 1006 F st. n. w.

No. 2990. Ad. D. 13. R. D. Mussey, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Curtis Costin**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of February, 1888.

8 LUCY G. M. COSTIN, Ex'x, 315 11th st. s. e.

No. 2965. Ad. D. 13. Bryson Tilley, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of February, 1888.

Nannie Risque Wilson v. **Elizabeth F. Risque et als.** } No. 10,778. Equity Docket 27.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, **Carey Jacqueline Risque**, infant, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to vest in the plaintiff, in fee, part of lot 195, in Beatty & Hawkins' addition to Georgetown, District of Columbia, beginning on South side of 5th street, at a point 138 feet east from Frederick street, and run east on 5th street 25 feet, thence south 150 feet, thence west 25 feet, thence north 150 feet to beginning.

By the Court. E. F. BINGHAM, Chief Justice, &c

A true copy. Test: R. J. MEIGS, Clerk, &c.

7 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 3rd, 1888.

In the case of Mary H. J. Bush and Willard Saulsbury, jr., Administrators d. b. n. c. t. a. of **Sarah M. Thomson**, dec'd, the Administrators d. b. n. c. t. a. aforesaid have, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrators d. b. n. c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

6 Test. DORSEY CLAGETT, Register of Wills.

No. 424. Ad. D. 8.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William O'Neal**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.

9 ANNIE J. O'NEAL, Ex'x, 2109 H st. n. w.

No. 2973. Ad. D. 13. A. B. Williams, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 21st, 1888.

In the case of Charles H. Dismer, Administrator of **Richard M. Brimmer**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 9th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test: DORSEY CLAGETT, Register of Wills.

No. 2606. Ad. D. 13. Ferdinand Schmidt, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of February, A. D. 1888.

Eugene Hyland Brawner, Executor of **Ellen J. Brawner**, deceased, Complainant, v. **George E. Kirk et al.**	No. 10,756. Eq. Doc. 27.

On motion of the plaintiff, by Messrs. George E. Hamilton and Thomas B. Higgins, his solicitors, it is ordered that the defendant, **George R. Zell**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject part of lot fourteen (14), in square four hundred and thirty-seven (437), to the payment of a judgment obtained in Cause No. 26,294, at Law, Docket No. 30.

By the Court. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

8 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the case of Charles W. Brown, Administrator of **Charles Brown**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test: DORSEY CLAGETT, Register of Wills.

No. 2579. Ad. D. 13. E. H. Thomas, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Phebe A. Lowe**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 10th day of February, 1888.

8 ELIZABETH DAVIS, AMOS DAVIS, } Adm'rs

L. Cabell Williamson, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

February 16th, 1888.

In the case of Fillmore Beall, Administrator c. t. a. of **John Fitzgerald**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test. DORSEY CLAGETT, Register of Wills.

No. 2592. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the case of Campbell Carrington, Administrator of **Mary E. Roach alias Minnie Raymond**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 9th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorised, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

8 Test. DORSEY CLAGETT, Register of Wills.

No. 2542. Ad. D. 13. Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

February 17th, 1888.

In the matter of the Estate of **William W. Hampton.**

Application for Letters of Administration on the estate of William W. Hampton was made on the 10th day of February, 1888, by Sarah F. Hampton, his sister.

All persons interested are hereby notified to appear in this Court on Friday, the 9th day of March, A. D. 1888, at 11 o'clock a. m., to show cause why Letters of Administration on said Estate should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and in the Evening Star previous to the said day.

By the Court. W. S. COX, Justice.

8 Test: DORSEY CLAGETT, Register of Wills.

No. 2983. Ad. D. 13. James H. Smith, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

In the case of Florence Stith Administratrix with the will annexed of the Estate of **Jane E. Dennis**, deceased, the Administratrix as aforesaid has, with the approval of the Court, appointed Friday, the 16th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

8 Test: DORSEY CLAGETT, Register of Wills.

No. 2580. Ad. D. 13. Chas. W. Dorsey, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Anthony H. Jannus**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.

8 FRANKLAND JANNUS, Ex'r, 938 F st. n. w., City.

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ATTORNEYS-AT-LAW.

WASHINGTON, D. C.

ABERT, WILLIAM STONE, 408 Fifth st. n. w.

BELL, W. PEIRCE, *Counsel in Patent Causes* 625 F St. n. w.

BLAIR, JOHN S., 1420 F St. n. w.

DUMONT, N., 629 F St. n. w.

EDWARDS & BARNARD, 500 5th St. n. w.

MACKEY, FRANKLIN H., 505 D St. n. w.

SAVILLE, JAMES H., 1419 F St. n. w.

CALIFORNIA.

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INTOXICATION AS AFFECTING CONTRIBUTORY NEGLIGENCE.

Where a person is injured by the negligence of another, the person injured being at the time intoxicated, that fact will not prevent a recovery without proof that the intoxication directly contributed to cause the injury; 61 Md. Rep., 167, Kean v. Balto. & Ohio Ry. Co. And in this case it was decided that, although the plaintiff's intoxication remotely contributed to his injuries, yet, if the defendant, by the exercise of reasonable care and diligence, could have prevented the injuries complained of it is responsible. In such case it is evident that the failure on the part of the defendant to exercise due care would constitute such negligence as would be the proximate cause of the injury complained of.

In 61 Texas Rep., p. 618, Ry. Co. v. Reason, it was decided that it was unimportant whether the plaintiff was intoxicated when he received his injuries, if they resulted from the negligence of the defendant, unless the plaintiff's own negligence contributed to the injury. See also the recent New York case, reported in full in this week's issue—Lynch v. The Mayor, &c.

In the case of Thorpe v. Town of Brookfield, 36 Conn. Rep., 320, an action was brought to recover damages against the owner of a defective bridge, and by reason of a defect in the bridge the plaintiff's horses were injured; the Supreme Court affirmed a judgment in favor of the plaintiff, where the following instruction was given: The court charges the jury that the intoxication of the driver would not of itself relieve the defendant of liability, but the question was whether or not he exercised reasonable care to avoid danger, and that, should the jury find that he was intoxicated at the time of the accident, they should take his condition into consideration, with the other facts of the case, in determining whether he exercised reasonable care to avoid the danger.

Drunkenness on the part of the plaintiff is a proper subject to be considered by the jury in determining the question as to whether the plaintiff was free from fault. 21 Wend., 615, Hartfield v. Roper; 12 Pick., 176, Lane v. Crombie; 5 Car. & P., 375, Pluckwell v. Wilson; 6 *Ibid.*, 23, Williams v. Holland; 5 Hill R., 282, Brownell v. Flagler.

Where an action was brought to recover damages for injuries sustained by the plaintiff in falling into an uncovered hole in a sidewalk it was held, in the case of Robinson v. Pioche, 6 California Rep., p. 461, that if the defendant was at fault the intoxication of the plaintiff cannot excuse such gross negligence.

An instruction to the jury—that if they shall find that at the time of the accident the plaintiff was intoxicated this of itself would constitute such a want of ordinary care as would preclude the plaintiff from the right to recover—was erroneous. 48 Me. Rep., 477, Stuart v. Machias Port.

On the question as to the amount of compensatory damages, that should be allowed the plaintiff in an action for personal injuries occasioned by the negligence of the defendant, it is competent to prove that the plaintiff, long prior to the date of the injury comp'ained of, and thenceforward till the time of the trial, had been and was an habitual drunkard, and had thereby been incapacitated for labor; the Cleveland, &c., Ry. v. Sutherland, 19 Ohio St. Rep., 151.

SUPREME COURT OF THE UNITED STATES.

REPORTED BY WM. STONE ABERT.

EJECTMENT.

THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN, Plaintiffs in Error,
v.
THE PENNSYLVANIA RAILROAD CO., THE HAMBURG-AMERICAN STEAM PACKET CO., THE NORTH GERMAN LLOYDS STEAMSHIP COMPANY and ADOLPH E. SCHMIDT.

Decided February 20, 1888.

1. The original proprietor of land on the western shore of the Hudson river where the city of Hoboken now stands, had no power to dedicate to the public use as a highway any part of the land lying east of and below high-water mark of the river as it then existed; as the land under water belonged to the State and could only be dedicated or subjected to an easement by the State or its grantees.

2. In an action of ejectment in behalf of the city of Hoboken, for the recovery of land constituting the extension eastwardly of certain streets, until they reach the navigable water of the river; the grants from the State of New Jersey under which the defendants claim, respectively, are a complete bar to the recovery sought in these suits.

3. Under these grants the defendants hold the rightful and exclusive possession of the premises in controversy, against the adverse claim of the plaintiff to any easement or right of way over them by virtue of the original dedication of the streets to high-water mark.

4. The State may discharge land of the burden of

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an easement and extinguish the public right to its enjoyment.

5. The several grants from the State, under which the defendants claim, were intended to secure to the grantees the whole beneficial interest and estate in the property described for their exclusive use, and exclude every right of use or occupancy on the part of the public in the land itself.

In error to the Circuit Court of the United States for the District of New Jersey.

T. N. McCARTER and JAMES F. MINTURN for plaintiffs in error.

J. D. BEDLE, J. B. VREDENBURGH and BARKER GUMMERE for defendants in error.

STATEMENT.

These are six actions of ejectment brought by the Mayor and Common Council of the City of Hoboken originally in the Supreme Court of New Jersey, and removed into the Circuit Court of the United States for that district by the several defendants, on the ground of citizenship or alienage. In that court they were tried as one case, the intervention of a jury having been duly waived in writing by the parties. Judgment was rendered in them severally for the defendants, to reverse which these writs of error have been sued out.

Mr. Justice MATTHEWS delivered the opinion of the Court.

In the year 1873 the Court of Errors and Appeals of New Jersey decided the case of the Hoboken Land and Improvement Company v. The Mayor and Common Council of the City of Hoboken, 7 Vroom, 540. It was an action of ejectment for the recovery of the possession of a strip of land, constituting the extension of Fourth street, as laid out on the Loss map over lands below the original high-water mark, reclaimed by the plaintiff in error in that suit, continued to the new water front. The unanimous judgment of that court affirmed the right of the city of Hoboken to the premises in dispute, being the extension of that street as a public highway. The foundation of that judgment is the dedication, according to the Loss map, of the streets delineated upon it as extending to the line of high-water mark at that date, and the nature of the title acquired by the Hoboken Land and Improvement Company, under the terms of their charter, to the land made by filling in, in front of the original high-water mark, upon and across which it was proposed to extend the street so as to secure access in behalf of the public to the stream of the river. It is argued that, as the present defendants claim title through the Hoboken Land and Improvement Company, to premises similarly situated and equally affected by the original dedication, the judgment of the Court of Errors and Appeals of New Jersey in that case conclusively establishes the law applicable to the present, and requires a reversal of the judgments of the Circuit Court of the United States.

It becomes necessary, therefore, at the outset, to ascertain and define the terms and scope of that judgment. In that case the court said (p. 546): "The title to the soil between the high-water line, as shown on Loss's map, and the present high-water line was originally in the State. It became the property of the defendants by reclamation under the powers contained in their charter. The contention was that it was not competent for Colonel Stevens to impress upon lands, the property of the State, a servitude such as the plaintiffs are seeking to have them appropriated to, and that when the defendants acquired title under legislative permission, they were entitled to hold such lands unimpaired by the servitude imposed upon the upland. The first branch of this proposition is conceded. But whether it will be available to his grantees to defeat the present claim of the city will depend upon considerations incident to the nature and effect of the original dedication. The street as dedicated extended to the high-water mark as it then was. There is no street shown on the map or in fact along the river in which Fourth street might terminate. River street, which is the first street crossing Fourth street parallel with the river, is laid down on the map at a distance of about 75 feet from the high-water line as it appears on the Loss map. The location of Fourth street, with its terminus at the water, demonstrates conclusively that its purpose was to provide a means of access for the public to the navigable waters, and such was the scope and purpose of the dedication." The court then refers to the case of New Orleans v. The United States, 10 Peters, 717, as showing that, according to the recognized law concerning dedications to public use, a grant of land bounded on a stream which has gradually changed its course by alluvial formations extends to the new boundaries, including the accumulated soil, and that, on the same principle, it had been held in that State, in the case of Jersey City v. Morris Canal, 1 Beas., 548, that a dedicated street terminating at the waters of a navigable river is continued to the new water front obtained by filling in in front on the shore by the owner of the land over which the street was dedicated; and to the same point the court cites the cases of The People v. Lambier, 5 Denio, 9, and Barclay v. Howell's Lessees, 6 Peters, 498. The learned judge, delivering the opinion of the New Jersey Court of Errors and Appeals, continues thus (p. 548): "In my judgment these cases declare the law correctly on this subject. The essence of the gift is the means of access to the public waters of the river, the advantages of which induces the growth of the city by reason of its adjacency and connection with the important navigable waters of the Hudson, which gave a peculiar commercial value to the lots put in the market by the dedication, which can only be preserved by maintaining unbroken the connection of the streets with the navigable river. Any obstructions of that access would not only derogate from the effect of the gift, but would also be a public nuisance." Referring then to the title claimed by the Hoboken Land and Improvement Company, adverse to the application of this presumptive right growing out of the original dedication on behalf of the public, the court say (p. 549): "The legislature alone has the power to release the dedicated lands and discharge the public servitude when it once has attached. Extinguishment by legislative action, it is insisted, has been effected as to a part of the premises in dispute by the fourth section of the defendants' act of incorporation. The argu-

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ment was that the land below high water, being the property of the State, and both the easement and the title being under legislative control, the extinguishment of the former, by a necessary implication, resulted from the grant of the latter. I am unwilling to concur in this construction of the statute. The grant to the defendants is not of lands of the State in express and definite terms. The right conferred is a mere privilege of reclamation and appropriation to private uses. Its exercise is expressly limited to lands covered with water in front of and adjoining lands that should be owned by the corporation. The proviso annexed to the grant shows clearly the legislative intent that the rights of others owning to the water should not be interfered with without express consent." Referring then to certain authorities as justifying this construction, the opinion proceeds (p. 551): "It is not necessary on the present occasion to express any opinion as to whether the defendants could under their charter have filled in in front of streets terminating at the water as against the public authorities resisting the execution of the work. The cases above cited are referred to to show the strictness of the construction made of statutes granting privileges of this kind to private persons. . . . The defendants' act of incorporation would probably relieve the defendants after the work was executed from the consequences of an unlawful encroachment on public lands in front of the streets, and of a nuisance in the obstruction of navigation; but it cannot affect the public easement of access to the navigable waters which existed before the act was passed. That public right is entirely distinct in its essential qualities from the title of the State in lands under tide-waters. The former inheres in the State in its sovereign capacity.

The latter is strictly proprietary. A grant of the proprietary title will never operate as a release or extinguishment of a sovereign right not necessarily included within the scope of the grant. The State, Morris Canal and Banking Company v. Haight, 7 Vroom, 471. The grant to the defendants comprised the valuable privilege of acquiring title to lands under tide-waters along their entire frontage on the river. The public easement is legally consistent with the title to the soil in a private owner, and the legislative intent to vest the proprietary title in the defendants will have legal effect without extinguishing the public right of access to the river, derived from the original dedication. Where two public rights of different origin, distinct in their nature, and capable of separate enjoyment, exist, a grant of one will not extinguish the other unles required by clear and unequivocal language. The cardinal rule of construction is the inquiry whether the legislative gift can take effect without drawing to it the additional right claimed. If it can, the latter is by operation of law excluded from the grant. Paterson and Newark R. R. Co. v. Stevens, 5 Vroom, 532. . . . The act incorporating the defendants contains no language indicative of an intent to extinguish the public right of access to the river, and the defendants hold the title acquired by legislative permission, subject to the obligation that resulted from the original dedication of permitting the connection of the street with the navigable waters to remain unbroken."

The two principal propositions established by this decision, so far as are material to be considered in these cases, appear by these extracts from the opinion, therefore, to be as follows: 1st, that the scope and purpose of the original dedication of the streets terminating at the water was to provide a means of access for the public to the navigable waters of the Hudson River; and 2d, that the intent and purpose of this dedication were not defeated by the rights acquired by the Hoboken Land and Improvement Company, under the terms of its charter, to the lands in front of the streets terminating at the water as filled in by that company.

That company, it will be understood, had become the successor to the title of the original proprietor, Colonel John Stevens, to the lands owned by him embraced within the limits of the Loss map not previously sold. The object of its incorporation, and its principal powers in respect thereto, are stated in the fourth section of its charter, as follows:

"SEC. 4. And be it enacted, that the said company be, and they are hereby, empowered to improve all such lands as they are hereby authorized to own or purchase, by laying out that portion of the same which lies north of Fourth street, in the village of Hoboken, into lots, streets, squares, lanes, alleys and other divisions; of leveling, raising and grading the same, or making thereon all such wharves, workshops, factories, warehouses, stores, dwellings and such other buildings and improvements as may be found or deemed necessary, ornamental, tal, or convenient, and constructing on the lands of the said company aqueducts or reservoirs, for conveying, collecting, and providing pure and wholesome water; and letting, renting, leasing, mortgaging, selling, or changing the same, or using any lot or other portion of any of the said lands for depots, and for agricultural, mining, or manufacturing purposes; and they shall have power to purchase, fill up, occupy, possess, and enjoy all land covered with water fronting and adjoining the lands that may be owned by them; and they may construct thereon wharves, harbors, piers, and slips, and all other structures requisite or proper for commercial and shipping purposes; and when they shall have purchased the ferry right from the owners thereof they may enjoy the same, and purchase and build steamboats: Provided, it shall not be lawful for the said company to fill up any such land covered with water, nor to construct any dock, pier, or wharf immediately in front of the lands of any other person or persons owning down to the water, without the consent of such person or persons so owning first had in writing and obtained."

Under this section it was that they proceeded to fill up, occupy, and improve the land covered with water fronting and adjoining the lands in the city of Hoboken which they had purchased, filling as they progessed in front of the several streets terminating on the river, as well as in front of the other lands which they had bought. They acquired no title to the lands reclaimed, except according to the terms of the permission granted in this section of the charter. The construction put upon this section

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by the New Jersey Court of Errors and Appeals was in substance that the license thereby granted to the company did not convey an unqualified title to the reclaimed lands in front of the streets, and therefore that the authority conferred by it was not intended to exclude the public right of access to the navigable water by an extension of the streets and highways laid out on the original land for that purpose.

It remains to be considered whether, consistently with that view of the law, the circumstances of the present cases distinguish them from the case decided, so as to justify us in affirming upon other grounds the judgments of the Circuit Court of the United States now under review.

It appears from the findings of fact that the several defendants in these causes are the assignees of the Hoboken Land and Improvement Company, and successors to that company in respect to the parcels of land sought to be recovered, of all its rights and title under its charter. The Hoboken Land and Improvement Company conveyed the premises held by the Pennsylvania Railroad Company by a deed executed December 1, 1864, in consideration of $68,583.33, the grantee being the Camden and Amboy Railroad Company. On March 31, 1869, the legislature of New Jersey passed an act entitled "An act to enable the united companies to improve lands under water at Kill von Kull and other places." Laws 1869, chap. 386, p. 1026. This act recites that the united companies had recently secured to the State the payment of $500,000 "for the grant of lands under water in front of lands owned by them, and are desirous of having the right and privilege of erecting and making wharves, piers and other improvements in front of other lands now owned by or in trust for them, so that they may safely make such improvements as they may find necessary to facilitate their business." It enacts "that the said united companies shall be, and they are hereby, authorized to reclaim and erect wharves and other improvements in front of any lands now owned by or in trust for them, or either of them, or by any company in which they now hold the controlling interest, adjoining Kill von Kull, or any other tide-waters of the State, and when so reclaimed and improved, to hold and possess and enjoy the same as owners thereof." It provides that such improvements shall be subject to the regulations, where applicable, as to the line of solid filling and as to pier lines heretofore recommended in the report of the commissioners made and filed under the act entitled "An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the State," approved April 11, 1864; but "neither said improvements, nor those which may be made by said companies in Harsimus Cove, shall be subject to any other restrictions than those contained in said report." It was further provided that the united companies should pay the further sum of $20,000 in full satisfaction for the right and privilege thereby granted, and that they should, on or before July 1, file in the office of the Secretary of State a map and description of the lands under water in front of the upland referred to in the section.

On the same day on which this act was passed and took effect, March 31, 1869, the legislature of New Jersey passed an act entitled a "Supplement to an act entitled 'An act to ascertain the rights of the State, and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,' approved April 11, 1864." Laws of 1869, p. 1017; Revision 1877, p. 982. By this act it was provided that the bulkhead line or lines of solid filling, and the pier lines in the tide-waters of the Hudson River, New York Bay, and Kill von Kull, lying between Enyard's dock, on the Kill von Kull, and the New York State line, so far as they had been recommended and reported to the legislature by the commissioners appointed under the original act, were adopted and declared to be fixed and established as the exterior bulkhead and pier lines between the points above named, as shown upon the maps accompanying the reports of the commissioners and filed in the office of the Secretary of State. The act made it unlawful to extend any structures into the river beyond these lines. It repealed an act approved March 18, 1851, the object of which was to authorize the owners of lands upon tide-waters to build wharves in front of the same, so far as the tide-waters of the Hudson River, New York Bay, and Kill von Kull were concerned, providing that said repeal "shall not be construed to restore any supposed usage, right, custom, or local commom law, founded upon the tacit consent of the State, or otherwise, to fill in any land under water below mean high tide;" and it prohibited any person from filling in, building on, or making any erection on, or reclaiming any land under the tide-waters of the State in New York Bay, Hudson River, or Kill von Kull without the grant or permission of the commissioners. This, the third section of the act, however, contained the following proviso: "Provided, however, that neither this section, nor any provision in this act contained, shall in any wise repeal or impair any grant of land under water, or right to reclaim made directly by legislative act, or grant, or license, power or authority, so made or given, to purchase, fill up, occupy, posess and enjoy lands covered with water fronting and adjoining lands owned, or authorized to be owned, by the corporation, or grantee, or licensee, in the legislative act mentioned, its, his or their representatives, grantees or assigns, or to repeal or impair any grant or license, power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned or authorized to be owned by the corporation, or grantee, or licensee, in the legislative act mentioned, its, his or their representatives, grantees or assigns, heretofore made or given directly by legislative act, whether said acts are or are not repealable, and as to any revocable license given by the board of chosen freeholders of a county to build docks, wharves or piers, or to fill in or reclaim any lands under water in the said New York Bay, Hudson River or Kill von Kull, the same shall be irrevocable, so far as the land under water has been reclaimed or built upon under such license at the time that this act takes effect."

The fourth section of the act provides that in case any person, who by any legislative act is a grantee or licensee, or has any such power or

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authority, shall be entitled to a deed in the name of the State of New Jersey conveying the land in the proviso to the third section mentioned, whether under water at that time or not, with the benefit of an express covenant that the State would not make or give any grant or license, power or authority affecting lands under water in front of said lands; and the commissioners, or any two of them, with the Governor and Attorney-General for the time being, were authorized to execute and deliver, and acknowledge, in the name of the State, a lease in perpetuity to such grantee or licensee of such lands and rights, reserving an annual rental of three dollars for each lineal foot measuring on the bulkhead line, or a conveyance in fee upon the payment of fifty dollars for each lineal foot measuring on the bulkhead line in front of the land included in said conveyance. It was also provided that "the conveyance or lease of the commissioners under this or any other section of this act, shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line the tide-water, by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland, from time to time made, shall adjoin the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation, and their heirs and assign, the rights to the perquisites of wharfage, and other like profits, tolls and charges."

Under the provisions of said act, the State of New Jersey, according to the findings of fact, for a valuable consideration, has conveyed to the Hoboken Land and Improvement Company, by deeds and conveyances properly executed, or to its assigns, the premises claimed in the several suits against the defendants other than the Pennsylvania Railroad Company.

An objection is taken in argument to the validity, under the constitution of New Jersey, of the act to enable the united companies to improve land under water at Kill von Kull and other places of March 31, 1869, under which the Pennsylvania Railroad Company claims title, on the ground that the title of the act does not sufficiently indicate its subject and that the subject is not single. The article of the State constitution to which this act is alleged to be repugnant is article 4, section 7, paragraph 4, as follows: "To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be embraced in the title." We cannot think, however, that this objection is well founded. The subject of the enactment is single; the united companies, it being recited, having paid $500,000 for the grant of lands under water in front of lands owned by them, were desirous of having the right and privilege of erecting and making wharves, piers, and other improvements in front of other lands now owned by or in trust for them, so that they might safely make such improvements as they might find necessary to facilitate their business. This is the declared purpose of the act. It has and professes to have but a single object; this was to confirm the title of the united companies to the lands described, and to define the uses to which they were subject, and to which they might lawfully be devoted. The subject-matter of the legislation was the interest of the united companies in respect to such land wherever situate. For the right conveyed by the new act, a further consideration of $20,000 was exacted and paid, and it was certainly appropriate that, in the same act requiring that consideration to be paid, there should be a full statement of all the rights intended to be secured. The statute, therefore, is unobjectionable in point of form.

It is next objected that this act of 1869 can have no application to the lands in question, because by its terms it applies only to lands under water in front of upland owned by the grantees, and that it did not appear that at that time the united companies owned any upland which these lands were in front of. We cannot doubt, however, that the land in question refers to and embraces the premises in controversy. It expressly refers to all lands owned by the united companies adjoining any of the tide-waters of the State, and undoubtedly had in view the lands conveyed by the Hoboken Land and Improvement Company by the deed of December 1, 1864. These they were authorized to reclaim, so far as necessary, by filling out to the lines fixed by the commissioners under the act of April 11, 1864, as lines of solid filling and as pier lines, upon which they were authorized to erect wharves and other improvements, and when so reclaimed and improved to have, hold, possess, and enjoy the same as owners thereof, and so absolutely such owners as that the improvements should not be subject to any other restrictions than those contained in the report of the commissioners. Under this act, having paid the consideration required, they filed the map and the description of the lands specified in the last proviso of the section, and the findings of the Circuit Court authorize us to assume that this map and description embraced the premises in controversy.

In the examination of the effect to be given to the riparian laws of the State of New Jersey by the act of April 11, 1864, in connection with the supplementary act of March 31, 1869, it is to be borne in mind that the lands below high-water mark, constituting the shores and submerged lands of the navigable waters of the State, were, according to its laws, the property of the State as sovereign. Over these lands it had absolute and exclusive dominion, including the right to appropriate them to such uses as might best serve its views of the public interest, subject to the power conferred by the Constitution upon Congress to regulate foreign and interstate commerce. The object of the legislation in question was evidently to define the relative rights of the State, representing the public sovereignty and interest, and of the owners of land bounded by high-water mark. The regulations to this end had in view a definite and permanent demarkation of the line in the water, beyond which there should be no obstructions or impediments to the public right of navigation; they also contemplated, as of equal importance, the manner in which and the persons by whom the intermediate space between those

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exterior lines and the original high-water mark should be filled up, reclaimed, occupied, and used, so as to make the enjoyment of such property most valuable to private and public interests involved in the public right of navigating the water. It was for this reason that this space was made the subject of grants by the State to corporations and other persons who were riparian owners adjacent thereto, with authority to erect or build thereon docks, wharves, and piers; and that prior grants of a similar character under legislative authority, even although in the form of mere executed licenses, were confirmed and perpetuated. It was for that reason that in the grant to the united companies this right and privilege of erecting and making wharves, piers, and other improvements was declared to be "so that they may safely make such improvements as they may find necessary to facilitate their business." For the same reason it was declared in the act of March 31, 1869, that the conveyance or lease of the commissioners under the act should not merely pass the title to the land therein described, but the right to reclaim and fill in and otherwise improve the same, and "to appropriate the land to exclusive private uses." In view of the same policy it was that by the same act, in reference to land under water which had not been improved, and in respect to which no authority or license to reclaim the same had been previously granted, it was provided that the grant from the State should be offered first to the riparian proprietor, and if after six months' notice he declined to buy the same from the State at its statutory price, the commissioners were authorized to grant the same to others having no riparian ownership, on condition, however, that the interest of the riparian owner as such in the shore and front of his land thus to be taken from his use should be paid for at a valuation to be judicially ascertained. The intent of this legislation is, therefore, manifest to treat the title and interest of the State in these shore lands as a distinct and separate estate, to be dealt with and disposed of in accordance with the terms of the statutes; first, by a sale and conveyance to the riparian owner himself, or to his assignees; and, second, in case of his neglect to take from the State its grant on the terms offered, then to a stranger, who, succeeding to the State's title, would have no relation to the adjacent riparian owner, except that of a common boundary. The title acquired by such a grantee, therefore, differs in every respect from that of a riparian owner to the alluvial accretions made by the changes in a shifting stream which constitutes the boundary of his possessions. The latter comes to him by virtue of his title to land bounded by a stream, and belongs to him because it is within the description of his original grant; but the title under the New Jersey grants is not only of a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary.

The nature of the title in the State to lands under tide-water was thoroughly considered by the Court of Errors and Appeals of New Jersey in the case of Stevens v. The Paterson and Newark R. R. Co., 5 Vroom, 532. It was there declared (p. 549): "That all navigable waters within the territorial limits of the State, and the soil under such waters, belong in actual propriety to the public; that the riparian owner by the common law has no peculiar rights in this public domain as incidents of his estate, and that the privileges he possesses by the local custom, or by force of the wharf act, to acquire such rights, can, before possession has been taken, be regulated or revoked at the will of the legislature. The result is that there is no legal obstacle to a grant by the legislature to the defendants of that part of the property of the public which lies in front of the lands of the plaintiff, and which is below high-water mark."

It was, therefore, held in that case, that it was competent for the legislative power of the State to grant to a stranger lands constituting the shore of a navigable river under tide-water, below the high-water mark, to be occupied and used with structures and improvements in such a manner as to cut off the access of the riparian owner from his land to the water, and that without making compensation to him for such loss. The act of March 31, 1869, as we have seen, afterward secured to the riparian owner the option of purchasing from the State its title to the shore, or, if granted to a stranger, compensation for the value of his privilege.

Having in view the manifest policy of this legislation, and the force and meaning of its language, we do not hesitate to adopt the conclusion that the several grants of the State to the united companies, under the act of March 31, 1869, to enable them to improve their lands under water at Kill von Kull and other places, and the grants under the general act of the same date, under which the other defendants claim, were intended to secure to the grantees the whole beneficial interest and estate in the property described for their exclusive use for the purposes expressed and intended in the grants. And, construing these conveyances most strongly in favor of the public, and yet so as not to defeat the grants themselves, we also conclude that the rights conveyed exclude every right of use or occupancy on the part of the public in the land itself. The land granted is specifically described by metes and bounds. The grant is a grant of the estate in the land, and not of a mere franchise or incorporeal hereditament. The uses declared are such as require an exclusive possession by the grantees, that they may hold, possess, improve, and use the same for their own use and profit, according to the nature of the business which by law they are authorized to conduct. In other words, under these grants the land conveyed is held by the grantees on the same terms on which all other lands are held by private persons under absolute titles, and every previous right of the State of New Jersey therein, whether proprietary or sovereign, is transferred or extinguished, except such sovereign rights as the State may lawfully exercise over all other private property.

It is further objected, however, that upon this supposition, that the grants of the State in question are absolute and unqualified, nevertheless they operated only upon the title which the State had when it made them; and that, construing the original dedication of Stevens by the Loss map of the streets to the river as contain-

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ing an implied covenant that they should be extended through any after-acquired lands thereafter owned by Stevens or by those claiming under him, the conclusion follows that the defendants, on acquiring the title of the State to the premises in dispute, were thereafter estopped to deny the right of the city of Hoboken to the easement which it seeks to establish by its recovery in these actions. It is admitted in the argument by counsel for the plaintiff, that the dedication could not impose a burden on the lands of the State, and that no such burden existed as long as the State remained the owner; but it is contended that, as the grants of the State only operated on its present title, that "when the State's title passed to the successor of John Stevens, who was estopped from excluding these streets from access to tide-water, the right as against him by estoppel sprang at once into existence and estopped him and all claiming under him." Suppose, instead of a dedication, it is said, John Stevens had made an express covenant with the city, that, as he acquired the State's title to these lands and reclaimed them, he would continue the streets to the new water line. In such case no one would contend that the riparian acts, or the grants made under them, would discharge such liability; it would attach to the lands as he acquired them, and bind him and his assigns. The dedication operates, it is claimed, on the same principle. No grant of the State's title would extinguish a liability which could not attach until after the State had parted with all its title to the lands.

But in this case there was no express covenant, and if any to that effect can be implied by law, it arises only upon the principle of an estoppel. Whether such an estoppel would arise upon the circumstances of the case, it is not necessary for us to discuss or decide. If we suppose it to exist, so that if the title acquired by the defendants from the State had been acquired from some other source, it would have been affected by it; nevertheless, the estoppel cannot apply to the defendants as successors to the title of the State. The grant, being from the State, creates an estoppel against the estoppel; for the State, in respect to the easements claimed, is the representative of the public, superior in authority and paramount in right to the city of Hoboken; and, as we have already seen, the existence of the easement defeats the grant of the State. The State, therefore, being estopped by its grant, is estopped to deny its effect to extinguish the public right to the easement claimed. The right insisted upon in these actions by the city of Hoboken is the public right, and not the right of individual citizens, claiming by virtue of conveyances of lots abutting on streets made by Stevens or his successors in the title. The public right represented by the plaintiff is subordinate to the State, and subject to its control. The State may release the obligation to the public, may discharge the land of the burden of the easement, and extinguish the public right to its enjoyment. Whatever it may do in that behalf conclusively binds the local authorities, when, as in the present cases, the rights of action asserted are based exclusively on the public right.

The extension of the easement of the public streets over the shore, when filled up below the original high-water mark to a new water line, is, by the supposition made, a mere legal conclusion. The original proprietor had no power to extend the dedication beyond his own lines over the public domain. The estoppel sought to be raised against him by his subsequent acquisition of the title of the State to the shore is a mere conclusion of law, and may be extinguished by a subsequent law. Such is the present case. If the law prior to the statutes of March 31, 1869, extended the easements of the dedicated streets to the newly made shore line, a subsequent law might extinguish it. This is what in fact was done, for the statutes of that date were not merely grants of rights of property, but were laws, which had the force of repealing all prior laws inconsistent with them.

Our conclusion, therefore, is that the grants from the State of New Jersey, under which the defendants claim, respectively, are a complete bar to the recovery sought against them in these suits. The effect of these grants was not considered or determined by the Court of Errors and Appeals of New Jersey in the case of the Hoboken Land and Improvement Company v. The Mayor and Common Council of the City of Hoboken, 7 Vroom, 540, and they were not elements in that judgment. The present cases are decided upon the distinction created by these grants from the State. It has not been necessary, therefore, for us to consider other questions raised in the argument in reference to the soundness in point of law of the judgment of the courts of New Jersey upon the facts involved, nor as to our obligation to follow that judgment as conclusive evidence of the settled law of the State on the subject. The new elements which have been introduced into these cases establish the rights of the defendants, as we have declared them, upon the basis of the absolute and unqualified title derived by them under direct grants from the State of New Jersey. Under these grants they have and hold the rightful and exclusive possession of the premises in controversy against the adverse claim of the plaintiff to any easement or right of way upon and over them, by virtue of the original dedication of the streets to high-water mark on the Loss map.

The several judgments of the Circuit Court in these cases are, therefore, affirmed.

UNITED STATES COURT OF CLAIMS.

REPORTED BY WM. STONE ABERT.

WILLIAM G. WELD ET AL.
v.
THE UNITED STATES.

1. The claimants having recovered judgment in the Court of Commissioners of Alabama Claims, are entitled to payment of their judgment, without any deduction for expenses of the Geneva tribunal of arbitration, section 5 of the act of Congress of June 2, 1886, having fixed the amount of the fund to be distributed to the judgment creditors and specifying exactly what shall be deducted therefrom.

2. This court has jurisdiction in law and equity, among other matters, of all claims founded upon any

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law of Congress or upon any contract with the Government of the United States; the present claim does not grow out of any stipulation of the treaty of Washington.

3. While the act giving jurisdiction excepts claims for pensions, war claims, claims which accrued more than six years before suit brought, and claims rejected, &c., it makes no exception of claims growing out of, or dependent upon, any treaty stipulation, and repeals all laws and parts of laws inconsistent with the act.

SAMUEL SHELLABARGER and JEREMIAH M. WILSON for claimants.

ROBERT A. HOWARD, Assistant Attorney-General, for the United States.

RICHARDSON, Ch. J., delivered the opinion of the court.

The only defense set up in this case is want of jurisdiction on account of the provisions of section 1066 of the Revised Statutes, which is as follows:

"SEC. 1066. The jurisdiction of the said court (of Claims) shall not extend to any claim against the Government not pending therein on December 1, 1862, growing out of, or dependent on, any treaty stipulation entered into with foreign nations or with the Indian tribes."

The argument of the defendants is, that as the claimants recovered judgment in the Court of Commissioners of Alabama Claims, re-established by the act of June 5, 1882, ch. 195 (22 Stat. L., 98), which was payable by section 7 of that act "out of the sum of money paid to the United States pursuant to article 7 of the treaty of Washington, and accruing therefrom, not appropriated to claims proved under the provisions of said chapter 459 (18 Stat. L., 245), or any act extending the time for the filing of claims thereunder," and are now seeking to recover part of that judgment, which they allege is due and unpaid; therefore their claim is one "growing out of, or dependent upon," a treaty stipulation entered into with "Great Britain," called the treaty of Washington (17 Stat. L., 863).

We are unable to find any stipulation of that treaty out of which the present claim grew, or upon which it is dependent It is true that Great Britain agreed to pay to the United States such sum as should be awarded by arbitrators to be appointed as therein prescribed; that such arbitrators were appointed and did award to the United States a sum in gross ($15,500,000) for all the claims referred to it, and that the United States received the money, and it was covered into the Treasury as a separate fund.

But there is no stipulation by which the United States agreed how the money, or any part of it, should be disposed of; nor did they become liable upon an implied assumpsit, growing out of the provisions of the treaty, to distribute the money to any individuals whatever. (Atocha's Case, 17 Wall., 439; Baron De Bode's Case, 8 Q. B., 208-285; 13 Q. B., 364; Rustomjee v. The Queen, 1 Q. B. Division, 487; 2 Q. B. Division, 69; Burnand v. Rodocanachi's Sons & Co., 5 C. P. D., 424; 7 House of Lords Appeal Cases, 333.)

We so held in the Great Western Insurance Co. Case (19 Ct. Cls., 206), and on appeal the Supreme Court said: "The opinion of the learned Chief Justice (Drake) of the Court of Claims is an able presentation of that view." (112 U. S. R., 193.)

Certainly the present claim does not *depend upon* any treaty stipulation, and if in any vague and indefinite sense of the words it "grew out of" the stipulations of the treaty because it may be supposed that the United States would never have recognized the claim unless they had received by treaty the money which constitutes the fund out of which it is made payable by statute, that is far too remote "*a growing out of treaty stipulations*" to have been within the contemplation and meaning of section 1066 of the Revised Statutes. The *fund*, but not the *claim to participate in its distribution*, grew out of the treaty stipulations.

The object of that provision was no doubt to prevent this court from making decisions interpreting and enforcing obligations of treaties by which the diplomatic affairs might be complicated, and was not to withdraw from its ordinary jurisdiction claims founded on laws of Congress appropriating to individuals money obtained by treaty, as to which claims no stipulations of a treaty could possibly be involved. There is little or no difference between the phrases "growing out of" and "dependent upon." Claims that are dependent upon treaty stipulations necessarily grow out of them; and we cannot conceive of a case growing out of such stipulations which must not be dependent upon them to a greater or less degree. The word "or" in this connection may not inappropriately be interpreted as meaning "and," so that the whole may be taken as one phrase, "growing out of and dependent upon."

The present claim, in fact and in law, is founded wholly upon the laws of Congress, and in deciding upon its merits we need not even examine or refer to the treaty or anything done under it.

The act of June, 1882, ch. 192 (22 Stat. L., 98), provided that judgments of the Court of Commissioners of Alabama Claims, of which that of the claimants is one, should be paid out of the sum of money paid to the United States pursuant to article 7 of the treaty of Washington, without other references to the treaty.

The controversy grows out of the statement and settlement of accounts by the accounting officers of the Treasury in the ordinary line of their duty under an act of Congress, the interpretation of which is the only issue between the parties.

The act of June 2, 1886, ch. 416 (24 Stat. L., 77), by section 5, provided how the account should be stated for the purpose of distribution of the fund among the judgment creditors. It specified the amount of the fund remaining in the Treasury, and what deductions therefrom should be made, and how such deductions should be determined. The amounts of those several deductions were fixed by the officers to whom that duty was intrusted, and it only remained for the accounting officers to so state the account and to pass the claims thereon according to the *pro rata* distribution provided by the statute. No discretionary powers were given to them, and their duties were the same as in other cases of accounting, in which their action merely directs that money shall be paid out of

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the Treasury by warrant, but does not affect the legal rights of the parties. (McKnight's Case, 13 Ct. Cls. R., 292; Longwill's Case, 17 Ct. Cls. R., 288, 291.)

They charged against the fund out of which the claimants' judgment was payable by statute, $249,168.41, expenses of tribunal of arbitration at Geneva. The claimants are seeking to recover a proportionate share of that amount, as improperly deducted by the accounting officers from the fund to be distributed.

The defendants rely upon the case of the Great Western Insurance Co., as decided by the Supreme Court (112 U. S. R., 193).

But in that case the claimant corporation was not seeking to recover under any law of Congress, but was attempting to enforce an alleged implied assumpsit on the part of the United States, growing out of, and dependent upon, the stipulations of the treaty of Washington, notwithstanding the laws of Congress, which expressly excluded its claim from consideration and from payment out of the fund in controversy. Instead of founding its claim upon a law of Congress, as do the present claimants, the company invoked the jurisdiction of this court to set aside and annul the statute provisions. The two cases proceed upon exactly opposite grounds.

In our opinion this court is not excluded from the jurisdiction of the present case by reason of section 1066 of the Revised Statutes, even if that section be in force and unrepealed. But it is a serious question whether that section is now in force.

The petition in this case was filed October 4, 1887, and must, therefore, be governed by the provisions of the act of March 3, 1887, ch. 359 (24 Stat. L., 505). The first section of the act gives this court jurisdiction in law and equity, among other matters, of all claims founded upon any law of Congress, or upon any contract with the Government of the United States. It excepts only claims for pensions, war claims, claims which accrued more than six years before suit brought, and claims rejected, &c., by other tribunals authorized to determine the same. It makes no exceptions of claims growing out of, or dependent upon, any treaty stipulation, and by section 16 it repeals all laws and parts of laws inconsistent with that act. Whether or not section 1066 of the Revised Statutes is repealed by that act it is not necessary to determine, and we express no opinion thereon, as we hold that the section does not in any event apply to the present case.

On the merits it can hardly be doubted, we think, that the accounting officers were in error in charging to and deducting from the fund the expenses of the Geneva tribunal of arbitration.

Section 5 of the act of June 2, 1886 (24 Stat. L., 77), fixes the amount of the fund and specifies exactly what shall be deducted from it, and provides that the balance shall be distributed to the judgment creditors. The item thus deducted was not among those thus specified.

Congress previously provided for the payment of the expenses of that tribunal out of any money in the Treasury not otherwise appropriated (act of Dec. 21, 1871, ch. 4, 17 Stat. L., 24), and has never made them chargeable to this fund. The claimants are entitled to their share of the amount thus improperly deducted, and judgment will be entered in their favor for $5,306.53.

NOTT and WELDON, JJ., were absent when this case was tried, and took no part in the decision.

HORACE E. MULLAN
v.
THE UNITED STATES.

1. The number and rank of the officers who are members of a general court-martial is discretionary with the appointing power, and his decision thereupon is conclusive.

2. The order of the commander-in-chief at a station, convening a court-martial, in which it is declared that "no other officers than those named can be assembled without manifest injury to the service," is a valid order; and the court-martial, consisting of seven members, five of whom were junior in rank to the claimant, was lawfully organized.

3. The claimant having been tried, convicted, and sentenced by this court-martial to dismissal from the service, that sentence having been confirmed by the President, July 6, 1883, the proceedings were valid, and he is not entitled to pay after said date.

EPPA HUNTON and JEFF. CHANDLER for claimant.

LEWIS COCHRAN for the United States.

SCOFIELD, J., delivered the opinion of the court.

The claimant was an officer of the Navy with the rank of commander.

February 18, 1883, he was in command of the United States steamer Ashuelot, attached to the squadron on the Asiatic station. On that day the steamer was run upon a rock and lost, with eleven of the crew. The disaster was attributed to the misconduct of the claimant.

A court-martial was convened by the commander-in-chief at the station, before which the claimant was arraigned, tried, convicted, and sentenced to dismissal from the service. July 6, 1883, the sentence was confirmed by the President.

The court-martial consisted of seven members, five of whom were junior in rank to the claimant. In the order convening the court-martial it is declared that "no other officers than those named can be assembled without manifest injury to the service." At the trial a protest against the organization of the court with a majority of the members junior to the claimant was filed by him.

For this reason the claimant now alleges that the organization of the court-martial was illegal and all its proceedings void; that, therefore, he is still a commander in the Navy and entitled to pay from July 6, 1883.

The court-martial was convened under the provisions of section 1624 of the Revised Statutes, which are as follows:

"ART. 38. General courts-martial may be convened by the President, the Secretary of the Navy, or the commander-in-chief of the fleet or squadron. . . .

"ART. 39. A general court-martial shall consist of not more than thirteen nor less than five commissioned officers as members; and as many officers, not exceeding thirteen, as can be con-

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vened without injury to the service shall be summoned on every such court. But in no case where it can be avoided without injury to the service shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside, and the others shall take place according to their rank."

This statute directs how a court-martial shall be composed, but authorizes a departure from that general direction when it cannot be followed without injury to the service.

It is not denied that the question of possible injury to the service, by a different composition of the court, was considered and passed upon by the officer authorized so to do; but it is contended that he erred in his conclusion, and that this court has power to correct the error by setting aside all the proceedings thereunder as null and void.

Section 143 of the Orders, Regulations, and Instructions for the Administration of Law and Justice in the United States Navy is as follows:

"It is to be understood, however, that the limitation with reference both to the number and rank of the members of a general court-martial is discretionary with the appointing power, and that his decision thereupon is conclusive."

This regulation, in the opinion of the court, has given to the statute the proper construction, and is in harmony with the decision of the Supreme Court in Martin v. Mott (12 Wheaton, 19)

In this case the act of Congress of February 28, 1797, had provided that "whenever the United States shall be . . . in imminent danger of invasion . . . it shall be lawful for the President," &c. This act does not in terms provide that the contingency shall be decided by the President, nor that his decision shall be conclusive of the fact; but the Supreme Court held that "the authority to decide whether the exigency had arisen belonged exclusively to the President, and that his decision was conclusive upon all other persons." In the same case the court lays down the following general rule:

"Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts."

This court has repeatedly held that, under the act of July 4, 1864 (13 Stat. L., 394), which authorizes "the commanding officer of an army or detachment" to purchase supplies without advertisement when an emergency exists, that such officer became "the sole judge of when the emergency existed." Baker & Folsom's Case (3 C. Cls. R., 343); Emory's Case (4 C. Cls. R., 386); Cobb's Case (18 C. Cls. R., 514).

Other questions were raised by the defendants and elaborately discussed by counsel on both sides, but as the court holds that the court-martial was lawfully organized and the claimant legally dismissed from the service, it is unnecessary to consider them.

The petition of the claimant will be dismissed.

FRAUD in obtaining a contract will bar a suit for specific performance thereof.—Kelly v. Central, etc., R. Co., S. C. Cal., Jan. 25, 1888; 16 Pac. Rep., 386.

N. Y. SUPREME COURT—GENERAL TERM.

Intoxication as Contributory Negligence.

JAMES LYNCH, Appellant, v. THE MAYOR, ALDERMEN and COMMONALTY OF THE CITY OF NEW YORK, Respondents.

VAN BRUNT, P.J., BARTLETT and MACOMBER, JJ.

Intoxication is no evidence of itself of contributory negligence on the part of a person seeking damages for injuries from an accident, and only becomes so by the fact that the intoxication contributed to the happening of the accident; and it was error for the court to charge that defendant would be entitled to a verdict if the jury found that plaintiff, at the time the accident occurred, was intoxicated.

Appeal from a judgment entered upon a verdict of a jury in favor of the defendant.

WALLACE MACFARLANE and CHAS. STRAUSS, of counsel for appellant.

JOHN T. TOWNSEND, jr., of counsel for respondents.

VAN BRUNT, P.J.—This action was brought to recover damages for injuries resulting from a fall down an embankment alleged to have been caused by the defective condition of one of the streets of the city of New York. The answer denied any negligence upon the part of the defendant and alleged contributory negligence. There was some evidence that the plaintiff was intoxicated at the time of the happening of the accident, and it was in instructing the jury as to the effect of this evidence that the learned justice inadvertently fell into error.

After charging the jury as to the proof in respect to the alleged negligence of the city, the learned judge stated that it must "not only appear that there was negligence on the part of the city to entitle the plaintiff to recover, but it must be shown that the plaintiff was free from what is technically called 'contributory negligence;' that is, any act on his part which tended to bring about the catastrophe from which he suffered. It is alleged in this case that the plaintiff was intoxicated. Intoxication is not a defense *per se*. It was said, very quaintly, by a judge, I think in California, that a drunken man is as much entitled to a safe street as a sober man, and much more in need of it.

"The city is bound to keep its streets in good condition as well for the drunken man as for the sober man. Therefore, intoxication is not a defense which can be invoked to decide such an action as this. It is, however, evidence of contributory negligence on the part of the intoxicated person.

"If he has been guilty of contributory negligence, and that contributory negligence consists in the fact of intoxication, he cannot recover; the city would be entitled to your verdict, if in this case you find that Lynch at the time the accident occurred was intoxicated, and there is nothing in the case which would enable you to measure degrees of intoxication."

It will be seen that, although the charge was that intoxication is not a defense which can be invoked to decide such an action as this, the jury were further charged that intoxication was evidence of contributory negligence on the part

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of the intoxicated person, and that if the plaintiff has been guilty of contributory negligence, and that contributory negligence consisted in the fact of intoxication, he could not recover; that the city would be entitled to a verdict if, in this case, the jury found that the plaintiff, at the time the accident occurred, was intoxicated.

This portion of the charge was excepted to, and was erroneous.

If intoxication is evidence of contributory negligence, then no recovery can be had where intoxication is shown, because if there is evidence of contributory negligence the jury are bound to find for the defendant.

In a subsequent part of the charge the learned judge laid down the true rule, viz.: That if the jury found that if the plaintiff was under the influence of liquor, and that that contributed to bring about this accident, the defendant could not recover. But nowhere is the previous erroneous instruction taken from the jury, and, in fact, the last words to the jury contained the erroneous proposition.

The counsel for the plaintiff, evidently seeing the mistake which the learned court had made, at the close of the charge stated, as a request to charge, that the intoxication, if there is any evidence of it, is at most a circumstance for the consideration of the jury in connection with the other facts of the case; and to this the learned court replied: "Intoxication is some evidence of contributory negligence that may be taken into consideration by the jury on that subject"—thus placing the erroneous proposition again before the jury, omitting to call their attention to the fact that intoxication is no evidence of itself of contributory negligence, and only becomes so by the fact that the intoxication contributed to the happening of the accident.

Although, as above stated, the true rule was laid down to the jury in respect to this class of evidence, yet much greater force was given to the erroneous direction by its repetition.

It is impossible for us to tell which instruction the jury followed, and hence, for the error committed, the judgment must be reversed and a new trial must be ordered, with costs to the appellant to abide the event.

BARTLETT and MACOMBER, JJ., concurred.—*N. Y. Daily Register.*

Kentucky Trade-Mark Decision.

Judge Holt has recently delivered the opinion of the Court of Appeals of Kentucky in the trade-mark case of Metcalfe v. Brand, involving the rights of the parties to use a certain trade-mark upon mustard. In the year 1810 Burrowes began the manufacture of mustard in Lexington, Ky., which became widely known as "Lexington Mustard." Some years afterward the plaintiff, Brand, purchased the business, and in 1877 removed it to Louisville, Ky. Prior to that time the label used upon the goods described the commodity as "Burrowes Mustard, Lexington, Ky.," which was subsequently changed to "Burrowes' Lexington Mustard," giving the name and address of the manufacturer at Louisville. In 1873 the defendant, Metcalfe, began to manufacture mustard in Lexington, and called it "Metcalfe's Improved Lexington Mustard." The court *held*, that where it is uncertain whether a geographical word is used as an address or as the name of a manufactured article, and it is uncertain which of two parties first used it in the last named way, neither can appropriate the word to his exclusive use as a trade-mark.

THE COURTS.

Supreme Court of the District of Columbia.

GENERAL TERM.

March 12.

Brown v. Brown. Decree that unless complainant pay to defendant alimony to April 10 his appeal shall stand dismissed.

Moses v. Taylor. Motion for rehearing denied.

Caton v. Caton. Divorce granted.

Goldsborough v. Ray. Demurrer sustained.

Candy v. Smith. Demurrer to special count sustained. Demurrer to general counts overruled and cause remanded.

Linn v. Hoover. Judgment below affirmed.

United States v. Crawford. Opinion sustaining motion to quash.

March 13.

Crown v. Baltimore and Potomac Railroad Company. Argued and submitted.

Martin v. Campbell. Decree reversing judgment below.

IN EQUITY.—New Suits.

March 5.

11050. Thomas J. Currier v. Henry M. Baker. To substitute trustee. Com. sol., A. C. Bradley.

March 7.

11051. Alice W. Harvey v. Levin W. Harvey. For divorce. Com. sol., S. S. Hinkle.

11052. District of Columbia v. Columbus Thomas et al. Interpleader. Com. sol., H. E. Davis.

March 8.

11053. Hetty Ann Key v. Annie G. Hume et al. To quiet title. Com. sol., Heber J. May.

March 9.

11054. The Directors of Providence Hospital v. District of Columbia et al. To cancel certain tax certificates. Com. sols., Morris & Hamilton and Higgins.

11055. J. Edward Park v. Sarah P. Peck et al. To sell six acres, &c. Com. sol., H. B. Davidson.

11056. Frank Hume v. Della Keefe et al. Criditors' bill and to sell lot. Com. sol., N. T. Murray.

March 10.

11057. Mary M. Keleher v. James T. Keleher. For alimony. Com. sol., M. J. Colbert.

11058. Sarah L. Bader v. George Bader. Divorce. Com. sol., William A. Meloy.

CIRCUIT COURT.—New Suits at Law.

March 5.

28492. William G. Zimmerman v. John H. Shelton et al. Damages, $2,500. Piffs atty, F. H. Mackey.

28493. Edward L. Palmer et al. v. Elphonzo Youngs. Account, $128.62. Piffs atty, R. W. McPherson.

March 6.

28494. James Foster v. Carroll Institute. Appeal.

28495. Charles T. Wood et al. v. Stephen T. Hopkins. Account, $508. Piffs attys, Worthington & Heald.

28496. Elizabeth M. Eason v. The Supreme Commandery United Order of the Golden Cross of the World. Policy, $2,000. Piffs attys, Newton & Lavender.

March 7.

28497. William S. Justis, trading as Camden Furniture Co., v. John J. Unsworth. Account, $462.65. Piffs attys, Garnett & Mackall.

28498. E. Kurtz Johnson et al. v. L. H. Carter. Judgment of Justice Strider, $57.

28499. Henry G. Chesley v. Same. Judgment of Justice Strider, $42.25.

March 8.

28500. James L. Barbour v. Patrick Cox. Account, $397.01. Piffs atty, J. H. Ralston.

28501. Edward Turpin v. William H. Yerkes. Damages, $10,000. Piffs atty, E. M. Hewlett.

March 10.

28502. Edward B. Bruce v. Luther M. Cornwell. Account, $1,540.40. Piffs atty, F. P. B. Sands.

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PROBATE COURT.—Justice Cox.

March 9.

Estate Charles Palmer. Letters granted John D. Bartlett; bond, $800.

Estate Benjamin L. Simpson. Will admitted to probate.

Estate Catharine E. Beall. Petition of Joseph N. Plowman and Marion L. Wilson that letters be issued to Robert S. Werden filed.

Estate Phillip Biegler. Will filed.

Estate William W. Hampton. Notice of publication.

Estate Obediah Kimmell. Codicil to will admitted to probate.

Estate Richard Trunnell. Order directing citation to Henry Trunnell.

Estate Ann Jones. Will filed with petition of S. C. Palmer for letters.

Estate Mary Roach, alias Minnie Raymond. Account of sale of personal estate returned.

Estate Henry McIntire. Guardian authorized to sell bond to pay expenses of record.

Estate Philip Shea. March 30 appointed for final distribution.

Estate Harriet S. Herbert. Inventory filed.

Estate Levi D. Burrows. Inventory filed.

Henry W. Sohon appointed guardian to William Palmer; bond, $700.

Campbell Carrington appointed guardian to Julia M. and Emma V. Tayman; bond, $800.

Accounts were passed in the following estates: Mary J. Wright, Anthony Buckley, Harriet S. Herbert, Eberhardt Koltman, Louisa Starke, and John Ryan.

March 12.

Estate Weltha E. Emmons. Certain issues sent to Circuit Court.

March 13.

Estate Edward Fee, alias Alexander. Receipt of legatee.

Estate Robert T. Shaw. Decree releasing and discharging Robert A. Phillips from accountability.

Estate James A. Jarboe. Sworn statement of administratrix in lieu of account.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of March, 1888.

Clara A. Engelhardt
v.
Frank Engelhardt. } No. 11,019. Docket 28.

On motion of the plaintiff, by Mr. Leon Tobriner, her solicitor, it is ordered that the defendant, **Frank Engelhardt**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce on the ground of desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
11 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 9th, 1888.

In the matter of the Estate of **Ann Jones**, late of Washington City, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Samuel C. Palmer.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why the said Will and four Codicils thereto annexed should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
11 Test: DORSEY CLAGETT, Register of Wills.
H. O. & R. Claughton, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of March, 1888.

Emmons S. Smith
v.
George C. Lewis. } At Law, No. 23,435. Docket 32.

On motion of the plaintiff, by Mr. Chapin Brown, his attorney, it is ordered that the defendant, **George C. Lewis**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

(The object of this suit is to collect the claim of the said plaintiff against the said defendant for $156.00, for the rent of house No. 1026 8th street (N. W.), Washington, D. C., from June 1st, 1887, to August 16th, 1887, at $62.50 per month; and for $2.75 advanced by the said plaintiff for the said defendant and for his use.)

Provided that a copy of this notice be published in the Evening Star once a week for each of three successive weeks before the said rule-day.

A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk, &c.
11 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Hillery Jordan
v.
John H. King, Adm'r, et al. } In Equity. No. 10,624.

W. Preston Williamson, trustee in this cause, having reported a sale of the real estate and premises described in these proceedings to Mrs. Cornelia Plumley, for the sum of $390.00, it is, this 9th day of March, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 9th day of April, A. D. 1888.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 9th day of April, A. D. 1888.

And it is further ordered that this cause be, and it hereby is, referred to the Auditor to state the trustee's account.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
11 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Michael T. Keliher**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.
11 MARY E. KELIHER, Adm'x, cor. 34th & P sts.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Obediah Kimmell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1888.
11 JOSEPH GAWLER Ex'r, 1734 Pa. ave. n. w.
No. 2942. Ad. D. 13. N. H. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 9, 1888.

In the case of Sallie Shea, Administratrix of **Philip Shea**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 30th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

11 Test: DORSEY CLAGETT, Register of Wills.
No. 947. Ad. D. 9. Edwards & Barnard, Proctors.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 9, 1888.

In the matter of the Estate of **Catharine E. Beall**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, to be granted to Robert S. Werden, of said District, has this day been made by Joseph N. Plowman and Marion L. Wilson.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of March, 1888, next, at 1 o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

By the Court. W. S. COX, Justice.
11 Test: DORSEY CLAGETT, Register of Wills.
Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The sixth day of March, 1888.

Charles W. Arndt v. **Matilda Arndt.** } No. 10,915. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, **Matilda Arndt**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce, upon the grounds of non-support and willful desertion for over two years from the filing of this cause.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Agnes Maria Smith**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.
10 BLAIR LEE, Ex'r,
Cor. 4½ street and Louisana avenue,
No. 2985. Ad. D. 13. Washington, D. C.

CHANCERY SALE OF IMPROVED PROPERTY.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on February 25, 1888, in Equity Cause No. 10,713, John Hurst v. Elizabeth Hurst, we will sell at public auction, in front of the premises, on MONDAY, MARCH NINETEENTH, 1888, at the hours named, the following real estate:

At HALF PAST FOUR P. M., the south twenty (20) feet front by the depth of lot five (5), in square three hundred and twenty-four (324), improved by a fine new two-story brick house, with all modern improvements, with large brick back building, being house No. 207 12th street northwest. Lot contains 1,000 square feet; rents for $35 per month.

At FIVE P. M., the north sixteen (16) feet four and one-half (4½) inches front by the depth of lot thirteen (13), in square three hundred and twenty-three (323), improved by a substantial two-story brick building, now under rent, being No. 314 11th street northwest. Lot contains nearly 1,600 square feet; 10-foot alley in rear; first building below Pennsylvania avenue. A fine location for business purposes.

Terms of sale: One-third purchase-money cash, one-third in one year, one-third in two years, or all cash, at purchaser's option. Deferred payments to be secured by trust on property sold and bear 6 per cent. interest. $300 deposit on each lot required at time of sale. Purchaser must comply with terms of sale in ten (10) days, otherwise a re-sale will be made at the risk and cost of defaulting purchaser. All conveyancing at purchaser's cost.

The above property may also be purchased at private sale if so desired.

ANDREW B. DUVALL, Cor. 4½ and D sts. n. w.,
THOMAS M. FIELDS, 456 La. ave. n. w., } Trustees.

11 DUNCANSON BROS., Auctioneers.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas A. Richards**, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of February next; they may otherwise by law be excluded from all benefit of said estate.

Given under my hand this 14th day of February, 1888.
9 SARAH ANN RICHARDS, Ex'x, 1016 N. J. ave. s. e.
No. 2967. Ad. D. 13. J. J. Wilmarth, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **William D. Fuller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.
10 ARTHUR MAC ARTHUR, Adm'r c. t. a.,
1201 N st. n. w., Washington, D. C.
No. 2278. Ad. D. 12. Wm. F. Mattingly, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Albany, New York, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Cora Livingston Barnard Mercer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1888.
10 RICH'D VARICK DEWITT,
Executor of the last will and testament of
Cora L. B. Mercer.
No. 2986. Ad. D. 13. James Lowndes, Proctor, 1505 Pa. ve

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1888.

R. J. Allen, Son & Co. v **The Anglo-American Insurance Company.** } No. 27,361. Docket 31.

On motion of the plaintiffs, by Birney & Birney, their attorneys, it is ordered that the defendant, **The Anglo-American Insurance Company**, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to condemn certain credits to the payment of a debt claimed by the said R. J. Allen, Son & Co. from said Anglo-American Insurance Compay.

By the Court. A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk.
10 By J R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 17th, 1888.

In the matter of the Estate of **Polly Y. Brownell**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased, has this day been made by Temperance P. Reed.

All persons interested are hereby notified to appear in this Court on Friday, the 16th day of March, next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
8 Test: DORSEY CLAGETT, Register of Wills.
F. D. McKenney, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William O'Neal**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.

9 ANNIE J. O'NEAL, Ex'x, 2109 H st. n. w.

No. 2973. Ad. D. 13. A. B. Williams, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 23d, 1888.

In the case of **Maria H. Steuart**, surviving Executrix of the Estate of **Maria Hunter**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 23rd day of March, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

9 Test: DORSEY CLAGETT, Register of Wills.

No. 2656. Ad. D. 13. Chas. W. Dorsey, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

February 24th, 1888.

In the matter of the Estate of **Lydia S. Button**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Zachariah S. Buckler.

All persons interested are hereby notified to appear in this Court on Friday, the 16th day of March next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

9 Test: DORSEY CLAGETT, Register of Wills.

No. 2949. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of March, 1888.

W. G. Raymond v. **Lucy Raymond.** } In Equity. No. 10,816. Docket 27.

On motion of the plaintiff, by Mr. J. Ambler Smith, his attorney, it is

Ordered, that the defendant cause her appearance to be entered herein or on before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* from the defendant.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

10 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Anthony H. Janus**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.

11 FRANKLAND JANNUS, Ex'r, 938 F st. n. w., City.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rebecca Cooper**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of February, 1888.

10 WM. BRYAN, Ex'r, 608 Penn. ave.

No. 2679. Ad. D. 13. E. H. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 29th day of February, 1888.

Carrie C. Davis et al. v. **Robert V. McKenny et al.** } No. 10,968. Docket 27.

On motion of the plaintiffs, by Mr. S. T. Thomas, their solicitor, it is ordered that the defendants, **Frederick C. Albright, Robert F. Pope, George E. Pope** and **Addie Talburt**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell the real estate of which Edward McKenny died seized, for the purpose of paying debts.

By the Court. W. S. COX, Justice, &c.

True Copy. Test: R. J. MEIGS, Clerk, &c.

10 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration c. t. a. on the personal estate of **Henry H. Kultz**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.

10 CHRISTIEN KULTZ,
Adm'x c. t. a., 507 11th st. n. w.

No. 2926. Ad. D. 13. C. A. Walter, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity, March 1, 1888.

Mary Rose v. **Margaret Cumberland et al.** } 10,916. Eq. Doc. 27.

On consideration of the report of James M. Johnston, trustee, of the sale of part of lot 22, in square No. 534, particularly described in the proceeding, to William G. Stotter, for $1,050.00, cash, it is ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of April, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

10 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1888.

Georgeanna Deal v. **James Henry Deal.** } No. 10,895. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **James Henry Deal**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the grounds of adultery and wilful desertion for over three years before the filing of this petition.

By the Court. W. S. COX, Justice, &c

True copy. Test: R. J. MEIGS, Clerk, &c.

10 By M. A. CLANCY, Ass't Clerk.

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WASHINGTON, D. C. - - - - MARCH 21, 1888.

THE TELEPHONE CASES.

The celebrated telephone cases were decided by the Supreme Court of the United States on Monday last, Mr. Justice Blatchford announcing the opinion of the court. The decision is in favor of the Bell Telephone Company on all the points in every one of the cases.

There were only four of the justices who united in the opinion of the majority of the court, while Justice Bradley read an opinion dissenting from that of the majority, in which dissent Justices Harlan and Field united.

Neither Justice Gray nor Justice Lamar sat in the cases, and the judgment of the court stands on the opinions of Chief Justice Waite and Associate Justices Miller, Matthews, and Blatchford.

It was the unanimous opinion that the patents issued to Alexander Graham Bell are untainted with fraud or even a suspicion of fraud. And it was also the unanimous verdict in effect that there was no evidence sufficient to cast reflection upon the integrity of Mr. Bell or his attorneys. The decision reviews the charge of fraud and collusion in the Patent Office, by means of which it was alleged Bell obtained surreptitious information with regard to the inventions of his rivals and then amended his own specifications.

The dissent of Justices Bradley, Field, and Harlan is based upon the Drawbaugh claim, the three justices being of the opinion that the evidence overwhelmingly shows that Drawbaugh was the first inventor of the speaking telephone, although he was unconscious of it and was not at the time aware of its importance.

The cases now decided are five in number, viz., The People's Telephone Company, or, as it is more familiarly known, the Drawbaugh case; The Molecular Telephone Company of New York; The Clay Commercial Telephone Company of Philadelphia; The Overland Telephone Company of New York., and Amos E. Dolbear, of Boston. The Bell Telephone Company has been the plaintiff in every one of them, and has defeated the defendants in the lower courts.

Following is an abstract of the decision:

The opinion was prepared by the Chief Justice, but owing to a slight indisposition he did not feel able to read it, and therefore requested Mr. Justice Blatchford to read it for him. The Chief Justice began his opinion with a review of the question raised as to the scope of the fifth clause of Bell's patent of March 7, 1876; that is, whether the patent was for an art or process of transmitting articulate speech or merely for an apparatus by which that object could be attained. The court is of opinion upon this point that articulate speech is one of the "vocal or other sounds" referred to in the fifth claim of the patent. Bell discovered that speech could be transmitted by gradually changing the intensity of a continuous electric current so as to make it correspond exactly to the changes in the density of the air caused by the sound of the voice. This was his art. He then devised a way in which these changes of intensity could be made and speech actually transmitted. Thus his art was put in a condition for practical use. In doing this, both discovery and invention, in the popular sense of these terms, were involved—discovery in finding the art and invention in devising the means of making it useful.

What Bell claims is the art of creating changes of intensity in a continuous current of electricity, exactly corresponding to the changes of density in the air caused by the vibrations which accompany vocal or other sounds, and of using that electrical condition thus created for sending and receiving articulate speech telegraphically. For that, among other things, his patent of 1876 was issued, and as such a patent it must, in the opinion of the court, be sustained. It is said that the claim, if given this broad construction, is virtually a claim for speech transmission by transmitting it; or, in other words, for all such doing of a thing as is probable by doing it. It is true that Bell transmits speech by transmitting it, and that long before he did so it was believed by scientists that it could be done by means of electricity if the electrical effect could be produced. Precisely how that subtle force behaves under Bell's treatment, or what form it takes, no one can tell. All we know is that he found out that by changing the intensity of a continuous current so as to make it correspond exactly with the change in the density of the air caused by sonorous vibrations vocal and other sounds could be transmitted and heard at a distance. This was the thing to be done, and Bell discovered the way of doing it. He was the first discoverer, and with his discovery he astonished the scientific world. A patent for such a discovery is not to be confined to the mere means which the discoverer improvised to prove the reality of his

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conception. The court is therefore of opinion that the patent must be sustained as a patent for a process or art.

The Chief Justice then considered the alleged anticipation of Bell's discovery by Philip Reis. Reis, the Chief Justice said, discovered how to reproduce musical tones, but he did no more. He could sing through his apparatus, but he could not talk, and from the beginning to the end he has conceded this, although his first paper was published in 1861, and Bell did not appear as a worker in the same field of scientific research until nearly fifteen years afterward, no advance had been made by the use of what he had contrived or of his method toward the great end to be accomplished. After reviewing the history of Reis's invention the Chief Justice said:

"It is not contended that Reis ever succeeded in actually transmitting speech, but only that his instrument was capable of it if he had only known how, and all his experiments in that direction were failures. It was left for Bell to discover that these failures were due, not to bad workmanship in Reis's instruments, but to the principle which was adopted as the basis of what had to be done. * * * Under such circumstances it is impossible to hold that what Reis did was an anticipation of the discovery of Bell."

After reviewing briefly the claims of Dr. Van der Weyde, James W. McDonough, and Cromwell F. Varley, and showing that those claims have no bearing upon the validity of Bell's patents, the Chief Justice took up the case of Daniel Drawbaugh, of Pennsylvania, and reviewed it at great length. He said the court had studied with care the depositions which had been taken in such large numbers to show that Drawbaugh succeeded in using the instruments which were put in evidence as exhibits, and which antedated the instruments of Bell, and if these depositions contained all the testimony in the case it would be more difficult to reach the conclusion that Drawbaugh's claim was not sustained. In the court's opinion their effect has been completely overcome by the conduct of Drawbaugh, about which there is no dispute, from the time of his visit to the Centennial until he was put forward by the promoters of the People's Telephone Company, nearly four years afterward, to contest the claims of Bell. He was silent so far as the general public were concerned when, if he had really done what these witnesses now think he did, he would most certainly have spoken.

The Chief Justice reviewed briefly the case of the Bell Telephone Company against the Molecular Telephone Company, which involves one of the claims of the patent issued to Bell on January 30, 1877. The court below held that the fifth claim of this patent was anticipated by the Schellen magnet. Bell's patent, the court holds, was not for the magnet, but for the telephone, of which it formed only a part. To that extent the decree in that case was erroneous.

SUPREME COURT OF THE UNITED STATES.

REPORTED BY WM. STONE ABBETT.

THE GREAT FALLS MANUFACTURING COMPANY, Appellant,

v.

AUGUSTUS H. GARLAND, Attorney-General of the United States, ET AL.

Decided February 6, 1888.

1. The plaintiff having instituted suit against the United States in the Court of Claims, to recover compensation for its property taken for public use, has thereby assented to submit the determination of the question to the tribunal named by Congress and waived its right of trial by jury, as well as the right to compensation in advance.

2. And the plaintiff is thereby estopped from suggesting that no judgment obtained in the Court of Claims can be enforced against the United States, but must await an appropriation for its payment.

Appeal from Circuit Court of the United States for the District of Maryland.

BENJAMIN F. BUTLER and O. D. BARRETT for Appellant.

A. H. GARLAND, Attorney-General, for Appellees.

Mr. Justice HARLAN delivered the opinion of the Court.

The bill alleges that the land and water rights described in the published notice of the Attorney-General are substantially those which would have been taken if the United States had adopted and executed Plan A, as described in the report of the arbitrators in 1863. In respect to that plan the arbitrators decided that if it were adopted and executed the plaintiff would be entitled to receive $63,766, and, in addition, to retain the right of using the remainder of the water, by means of proper canal and bulkhead appliances on the Virginia shore of the river. While the company contends that its enjoyment of the right so reserved cannot lawfully be interfered with, it is not clear that it means to insist upon the award of 1863, in respect to said amount, as absolutely binding upon the United States in proceedings had under the act of 1882. It will be remembered that the award of 1863 covered four alternative plans for the Potomac dam of the Washington Aqueduct. The United States adopted and executed only Plan 4, and thereby manifested its purpose not to adopt and execute Plan A. Neither the Government nor the company is bound by that award, so far as it relates to plans which the United States did not adopt and ex-

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ecute. The present inquiry in respect to lands or water rights taken from the plaintiff must, therefore, be conducted with reference to their value—not in 1863, when the Government declined to take them, but in 1883, at the time of their being condemned for public use under the act of 1882. It is, consequently, an immaterial circumstance that the award of 1863 reserved to the company, as against the United States, the right to maintain a canal and bulk-head across and upon the land of the United States, on the Virginia shore of the Potomac. No such reservation is made by the act of 1882, and the officers charged with its execution were not required to concede any such right, though, of course, the United States are bound to make just compensation to the company for property rights of whatever description taken from it for, and appropriated to, public use.

Much stress seems to be laid upon the allegation in the bill—which the appellant insists must be taken as true—that the Secretary of War, by his servants and agents, took possession of lands of the plaintiff, which are "not within any description made, surveyed, or traced" by him, and has used the same for the purpose of constructing the proposed dam across Conn's Island and to the Virginia shore. As the act of Congress provided that the Secretary of War, upon the publication by the Attorney-General of the required notice, "may take possession of the premises embraced in the survey and map," it is contended that his possession of the company's land and water rights is without authority of law and constitutes a mere trespass; in which case, it is argued, the United States are not legally bound to make compensation to the plaintiff. It is clear that the allegation that the lands taken for the purposes of the dam in question are not embraced by the survey is not to be literally construed. The plaintiff surely does not mean that all the lands taken by the Secretary are outside of the survey made under his order; but only that such lands are not entirely within its limits, and that the survey was not sufficiently accurate "to be the foundation of passing the title to the land and water rights" of the complainant "necessary to be taken for the purposes of said act."

The plaintiff admits that a survey was in fact made, and that the Attorney-General published a notice based upon it. And there is no suggestion that the Secretary has taken any land other than that intended to be embraced within the survey, of which the Attorney-General gave notice by publication. Taking all the allegations of the bill together, we understand the complaint only to be that the survey and notice were not such as in law justified the Secretary of War in taking possession of the lands upon which the proposed dam was being constructed when the suit was brought. But even if it be true that some part of the land actually occupied by the Government is not within the survey and map, still the United States are under an obligation imposed by the Constitution to make just compensation for all that has been in fact taken and is retained for the proposed dam. While Congress supposed that a survey and map could be made with such accuracy as to embrace all the land necessary, under any circumstances, for the purposes indicated in the act of 1882, and while provision is made whereby the owners of lands, covered by such survey and map, can obtain just compensation, the act also opens the Court of Claims to every person who, by the construction of the works in question, has been injured in any property right, provided that, within a given time, such person file his petition in that court, setting forth his right or title and the amount claimed by him as damages. So that if the Secretary of War, who was invested with large discretion in determining what land was actually required to accomplish in the best manner the object Congress had in view, found it necessary to take, and has taken and used, and still holds lands of the plaintiff for the proposed dam, which happen not to be covered by the survey and map, the United States are as much bound to make just compensation therefor as if such lands had been actually embraced in that survey and map. Of course we are not to be understood as saying that the Secretary of War could, by any act of his, bind the United States to pay for lands taken by him which, manifestly, had no substantial connection with the construction of the dam across Conn's Island to the Virginia shore. It is sufficient to say that the record discloses nothing showing that he has taken more land than was reasonably necessary for the purposes described in the act of Congress, or that he did not honestly and reasonably exercise the discretion with which he was invested; and, consequently, the Government is under a constitutional obligation to make compensation for any property or property right taken, used, and held by him for the purposes indicated in the act of Congress, whether it is embraced or described in said survey or map or not. United States v. Great Falls Manf'g Co., 112 U. S., 645, 656.

In reference to the allegation that the survey and map made by the Secretary were not sufficiently accurate, and that the notice published by the Attorney-General was materially defective, it may be further said that all such objections were waived by the company when, proceeding under the act of 1882, it invoked the jurisdiction of the Court of Claims to give judgment against the United States for such compensation as it was entitled to receive for its land and water rights. Even if the Secretary's survey and map and the publication of the Attorney-General's notice did not, in strict law, justify the former in taking possession of the land and water rights in question, it was competent for the company to waive the tort and proceed against the United States, as upon an implied contract, it appearing, as it does here, that the Government recognizes and retains the possession taken in its behalf for the public purposes indicated in the act under which its officers have proceeded.

It is, however, contended that the act is, in all of its parts, unconstitutional and void. The grounds upon which the plaintiff rests this contention are that the act makes no provision by which compensation for property taken under it can be constitutionally adjusted and determined; that it does not provide for the ascertainment of such compensation by the verdict of a jury; that it compels the plaintiff to have recourse to the Court of Claims, which is a court unknown to

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the Constitution, being neither a court of equity, such as was known at the adoption of that instrument, nor a court of law proceeding according to the rules of the common law, but only a board of referees, constituted by one party to hear such cases as another party will consent to submit to its determination, and without power to enforce its judgment against the party by whom it is created; and that it directs property to be taken and the owner thereof dispossessed without making provision for just compensation.

These are questions of much interest, and their examination, in the light of the authorities, might not be altogether unprofitable. But this opinion need not be extended for the purpose of such an examination; for the questions propounded are not material in the determination of the present case. They have become immaterial by the act of the plaintiff in instituting suit against the United States in the Court of Claims. In that suit compensation was sought for its property taken for public use, while the present suit proceeds upon the ground that it has not been lawfully taken, and that it is entitled to be placed in possession thereof. Congress prescribed a particular mode for ascertaining the compensation which claimants of property taken for the purposes indicated in the act of 1882 were entitled to receive. It gave them liberty to proceed by suit against the United States before a designated tribunal, which, since the passage of the act of March 17, 1866 (14 Stat., 9), has exercised "all the functions of a court," from whose judgment appeals regularly lie to this court. United States v. Klein, 13 Wall., 145; United States v. Jones, 119 U. S., 477; Gordon v. United States, 117 *Id.*, 697. The plaintiff, by adopting that mode, has assented to the taking of its property by the Government for public use, and has agreed to submit the determination of the question of compensation to the tribunal named by Congress. By the very act of suing in the Court of Claims, under the statute of 1882, it has not only waived the right, if such right it had, to compensation in advance of the taking of its property, but the right, if such it had, to demand that the amount of compensation be determined by a jury. By the same act it has estopped itself from suggesting that no judgment obtained in the Court of Claims can be enforced against the United States, but must await an appropriation for its payment. When it resorted to that court it knew that its judgments against the United States could only be paid out of money appropriated for that purpose by Congress. In short, the plaintiff has voluntarily accepted the provisions of the act of Congress in respect to the mode of ascertaining the compensation to be made to it. This view cannot work any permanent injury to the plaintiff; for that act expressly declares that the absolute title to the premises in question shall not vest in the United States until the owner receives payment therefor; that is, the Government holds the premises for public use, subject to the condition imposed by the Constitution, and by the act of Congress, that it will, without unreasonable delay, make such compensation therefor as may be awarded by th e tribunal to which the whole subject has been submitted. It is to be assumed that the United States is incapable of bad faith, and that Congress will promptly make the necessary appropriation, whenever the amount of compensation has been ascertained in the mode prescribed by the act of 1882.

It is scarcely necessary to say that it is immaterial that the plaintiff invoked the jurisdiction of the Court of Claims from fear that, if it did not file its petition in that court within the time limited, it might lose the right to demand compensation for its property. If the act of the Secretary of War in taking possession of the property was in violation of law neither he nor his agents could rightfully hold possession against the plaintiff; in which case the plaintiff might have stood upon its rights, under the Constitution, and invoked judicial authority for such protection as the law would afford against the unauthorized acts of public officers. But the plaintiff chose to acquiesce in the taking of its property for public use and to accept the offer of the Government to have the amount of compensation fixed by the Court of Claims according to its peculiar modes of procedure. The reasons inducing the plaintiff to adopt such a course can have no influence upon the action of that court nor affect its power to ascertain and award just compensation for the loss of the property.

Upon the case as presented to us, and without intending to express doubt as to the constitutionality of the act of July 15, 1882, we are of the opinion that there is no obstacle in the way of the plaintiff's securing, by means of its suit in the Court of Claims, and without unreasonable delay, just compensation for all of its property taken for the public use indicated in the act of Congress; and, consequently, the decree dismissing its bill is affirmed.

SPENCER TRASK, Appellant,

v.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, THE FLORIDA CENTRAL RAILROAD COMPANY, J. FRED. SCHUTTE, ET AL.

Decided February 6, 1888.

1. The purchaser of $192,000 of the bonds of a State upon which no interest had been paid for ten years, where the debt for which the bonds were held as security amounted to but $40,000, cannot be considered a purchaser of commercial paper in good faith for a valuable consideration without notice.

2. The mere fact that no interest had ever been paid furnished the strongest presumptive evidence that the bonds had been commercially dishonored; and being void against the State, the purchaser, having notice from the face of the agreement under which the sale was made that the bonds had been the subject of litigation, cannot enforce their collection against a railroad company which had given a lien on its property to secure their payment.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

D. P. HOLLAND and S. P. NASH for Appellant.
WANE MACVEAGH for Appellees.

Mr. Chief Justice WAITE delivered the opinion of the Court.

This suit was brought by Spencer Trask to

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collect 192 of the 1,000 bonds of the State of Florida, issued to the Florida Central Railroad Company, which were the subject of consideration by this court in Railroad Companies v. Schutte, 103 U. S., 118. In that case it was decided that, although the bonds were void as against the State, the railroad company that sold them was estopped from setting up their invalidity as a defense to an action brought by a *bona fide* holder to enforce the lien the company had given on its property to secure their payment. Accordingly a decree was rendered establishing the lien of the holders of 197 bonds on the railroad of the company and ordering a sale to pay the amount due thereon. Trask now claims to be a *bona fide* holder of the 192 bonds he sues for and seeks the same relief as to them. He concedes the invalidity of the bonds so far as the State is concerned, but as against the railroad company and its property claims the benefit of the same estoppel that was adjudged in the other case to exist in favor of those who recovered there.

The general facts as to the issue of the bonds are stated in the case of Schutte, beginning at page 127 of the volume (103) in which it is reported. The correctness of our findings then is not denied now. Indeed, Trask relies upon that decision as the basis of his right to recover, and the only disputed question is whether he does in law and in fact occupy the position of a *bona fide* holder. That is substantially a question of fact only, and it presents itself in a double aspect. Trask got his title from Thomas B. Coddington, and the inquiry is, first, as to his own position separate from that of Coddington, and, if that is not sufficient, then next as to that of Coddington, under whom he claims.

We have carefully considered the testimony bearing on these questions, both in the record as it has been printed in the present case and in that of the Schutte case brought into this also by stipulation. It would serve no useful purpose to refer to this testimony in detail, and it is sufficient to say that we have had no difficulty in reaching the conclusion that Trask, as a purchaser of the bonds, occupies no better position than Coddington, from whom he bought. His purchase was made September 12, 1881, at an auction sale in the city of New York. The bonds had then been running ten years and more, and no interest had ever been paid upon them. As the sale was made under the agreement of August 29, 1872, Trask is chargeable with notice of the contents of that instrument, which showed on its face that the bonds had been the subject of litigation and had not been obtained by Coddington in the ordinary course of business. His debt, for which they were held, was $40,000, and the bonds, without interest, which had been running ten years at eight per cent. per annum, amounted to $192,000. As the bonds were State bonds the mere fact that no interest had ever been paid furnished the strongest presumptive evidence that they were dishonored. The interest alone, if collected, would much more than pay the debt for which the bonds were held. The circumstances connected with the sale also were entirely inconsistent with the idea of a purchase of commercial paper in good faith for a valuable consideration without notice. No one present at the time could have had any other understanding than that the sale was of bonds which had been commercially dishonored.

We are equally well satisfied that Coddington was never in any commercial sense a *bona fide* holder of the bonds. According to his own testimony he was originally the mere agent of those who were engaged in perpetrating the fraud upon the railroad company, and employed by them to get the bonds from Florida to London, so that they might be sold and a large part of the proceeds applied to the payment of the personal debts of one of the guilty parties. He undoubtedly did this because he had been told that it would enable "the parties in interest" to pay him the cash for $24,465 of coupons of another company for which they were bound. He entered into no contract with the Florida Central Company, and it could never have been supposed by him that any part of the proceeds were to be paid into its treasury or for its use. He could not but have known that the whole purpose of his employment was to get the bonds to London, where they had been contracted to be sold at a price that would yield less than half their face value, and that he was himself to apply more than half of this to the payment of the individual debts of one of the large stockholders of the company, by whose influence and in whose interest the railroad bonds had been executed to be exchanged for the State bonds, which he was to take away. Under such circumstances it is certain that he could have acquired no lien on the bonds as security for any services he might render in transferring them to London or for any liability he had incurred to third parties in order to get the bonds away. His contract for the service, and for the compensation he was to receive, was not with the railroad company itself, but with the president of the Jacksonville, Pensacola and Mobile Railroad Company, who was engaged in appropriating the bonds issued to the Florida Central Company to his own use. This disposes of his claim of lien on account of his services and liabilities as agent. He was not the agent of the Florida Central Railroad Company, and as it must be conceded that those for whom he was acting had no title as against this company, there was nothing in his hands to which any lien could attach in his favor any more than in favor of his principals.

As to the contract made with the Jacksonville, Pensacola and Mobile Company on the 29th of August, 1872, by which the 192 bonds were given to Coddington as security for a debt owing to him by that company, little need be said. The Jacksonville, Pensacola and Mobile Company had no legal right to the bonds, and it could not, therefore, pledge them as security for its debts. All this Coddington knew or ought to have known. And besides, when this contract was made the fraud and illegality in the original issue of the bonds, both by the railroad company and the State, had become notorious, and it is impossible that Coddington, situated as he was, could have been ignorant of the facts. In order to get the bonds away from Florida he was compelled to arrange with certain stockholders of the Florida Central Company, who had begun a suit to prevent their removal by the president of the Jacksonville, Pensacola

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and Mobile Company, on the ground that he had no right to use the road of the Florida Central Company "and cover it with liens to raise money to pay private debts, notwithstanding he is the owner of a majority of the stock." It is unnecessary to refer more particularly to the evidence. It is full and conclusive and leaves no doubt on our minds as to the knowledge of Coddington of such facts as would prevent him from acquiring any title to the bonds he took away by purchasing them from any of the parties engaged in the transaction, which he could enforce as a *bona fide* holder against the Florida Central Company.

The decree of the Circuit Court is affirmed.

MATTHEW J. SHOECRAFT, Appellant,
v.
WILLIAM D. BLOXHAM, Governor; W. D. BARNES, Comptroller; HENRY A. L'ENGLE, Treasurer; GEORGE P. RANEY, Attorney-General, and P. W. WHITE, Commissioner of Lands and Immigration of the State of Florida, as Trustees of the Internal Improvement Fund of the State of Florida; HAMILTON DISSTON, ET AL.

Decided February 20, 1888.

1. A suit to enforce the performance of a contract is a suit to recover the contents of a chose in action, within the meaning of section 629 of the Revised Statutes.

2. A deed of trust, in the nature of a mortgage, set out in full a contract between the mortgagor and certain parties for the conveyance of several parcels of land to him, and then conveyed to the mortgagee all the right, title, and interest which he, the mortgagor, had, or might thereafter acquire, "in and to" the lands embraced by the contract: *Held*, that the conveyance was in legal effect an assignment of the contract; and that the assignee could not maintain a suit for the enforcement of this contract in the Circuit Court of the United States, under section 629 of the Revised Statutes, if the assignor could not have maintained the suit in such Circuit Court if no assignment had been made.

Appeal from the Circuit Court of the United States for the Northern District of Florida.

C. K. DAVIS for Appellant.

W. S. CHISHOLM and R. G. ERWIN for Appellees.

Mr. Justice FIELD delivered the opinion of the Court.

This is a suit in equity to enforce the performance of a contract, made between the Trustees of the Internal Improvement Fund of the State of Florida and the Jacksonville, Pensacola and Mobile Railroad Company, for the conveyance of certain lands in Florida, and to determine the rights of various parties claiming interests in them.

As alleged in the bill, by the act of Congress of September 28, 1850, to enable the State of Arkansas and other States to reclaim the swamp lands within their limits (9 Stats., 519), there was granted to the State of Florida the whole of the swamp and overflowed lands within it, made unfit thereby for cultivation, which were at the date of the act unsold; and this grant was accepted by the State. By an act of the legislature, approved January 6, 1855, all of these lands and the proceeds thereof were set apart as a separate fund, called the Internal Improvement Fund of the State, to be applied as there provided. To insure the proper application of the fund to the purposes declared the lands and the charge of the proceeds arising from their sale were vested in five trustees, namely, the Governor, the Comptroller of Public Accounts, the State Treasurer, the Attorney-General, and the Register of Public Lands of the State, and their successors in office, in trust, with power to sell the lands, to receive payment thereof, and to make such disposition of the proceeds as the act directed, and, among other things, to pay the interest as it should become due on the bonds to be issued by different railroad companies under the authority of the act; and also to receive semi-annually one-half of one per cent. of the bonds of each separate line of railroad, and invest the same in certain specified securities. The act provided that all bonds issued under its provisions by any railroad company should be a first mortgage on its road-bed, iron, equipment, workshops, depots, and franchises, and that upon its failure to provide the interest on the bonds issued by it, and the sum of one per cent. per annum as a sinking fund, the trustees should take possession of its road and property and sell the same, and apply the proceeds to the purchase and cancellation of the outstanding bonds on which default was thus made.

The provisions of the act were accepted by various railroad companies, namely, the Florida, Atlantic and Gulf Central Railroad Company, the Tallahassee Railroad Company, and the Florida Railroad Company, each of which was, prior to 1860, a corporation created under the laws of the State, and had issued its bonds, and prior to the year 1867 had made default in the payment of the interest on them and of the one per cent. required for the sinking fund. These bonds, or at least the interest thereon in default, and the one per cent. were a first lien upon all the swamp lands granted to the State. The amount of the bonds, interest, and percentage in default reached nearly three millions of dollars. In 1868 and 1869 the trustees seized each of these roads and sold them to various purchasers for sums which in the aggregate were less by one million and a half of dollars than the amount in default, leaving the Internal Improvement Fund and the lands liable for the deficiency.

Among the holders of railroad bonds issued was one Francis Vose, a citizen of New York, who held bonds of the Florida Railroad Company, and he brought a suit in equity in the United States Circuit Court for the Northern District of Florida against the trustees of the Improvement Fund, praying that the amount due him might be collected and enforced out of the lands conveyed to the trustees. On December 6, 1870, an injunction was issued in that suit, restraining the trustees from selling or disposing of the lands otherwise than in accordance with the provisions of the act of 1855. At this time the Improvement Fund and the lands were encumbered for a very large amount; and the trustees, being desirous to arrange for the

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payment of the debts, including the claim of Vose, and to aid in the construction of a certain railroad, on May 31, 1871, entered into an agreement with the Jacksonville, Pensacola and Mobile Railroad Company, by which they were to convey to it all the lands held or to be held by them in trust under the act of 1855, with some few exceptions not necessary to be mentioned; and the railroad company, in consideration thereof, was to satisfy and pay all existing liabilities in the nature of liens on the Internal Improvement Fund, to cancel and surrender the evidences thereof to the trustees, to pay the sum of $100,000 for the benefit of the fund, and to construct a certain railroad from Jacksonville to Mobile, by extending the road from Quincy, its then terminus, and complete it within five years. The trustees were to execute deeds of all of said lands and to deliver the same to the railroad company as soon as the injunction in the Vose case should be dissolved or modified. This contract was, in December, 1871, submitted to the court by Vose and the trustees for its consideration and approval, and the court thereupon decreed substantially as follows:

That there was due Vose by the trustees the sum of $211,885.45 upon the past-due coupons of the bonds held by him, and also certain other sums, making in the aggregate $273,000; that the articles of agreement between the trustees and the railroad company be confirmed and made valid upon the following conditions: That the trustees should forthwith, upon the payment by the railroad company of the sum of $10,000, as provided, execute and deliver to one Littlefield, president of the company, or such person or corporation as he should designate, a deed of conveyance of a certain 100,000 acres of land, and also execute and deliver deeds of conveyance to the Jacksonville, Pensacola and Mobile Railroad Company of all the lands embraced in said articles of agreement not in the decree otherwise provided for, which deeds were to be deposited with Brown Brothers & Company, of New York city, and to be delivered by such firm to the railroad company upon the payment by it to said Vose of his claim upon the Internal Improvement Fund, upon such terms as should be arranged between him and the company, within ten months from the date of the decree.

Various transactions were had between the Jacksonville, Pensacola and Mobile Railroad Company and other parties subsequently to this contract, and, among others, it executed and delivered to the Security Construction and Trust Company eight hundred of its bonds, for the sum of $100,000 each, running to the complainant, Matthew J. Shoecraft, or bearer, and payable January 1, 1903, with interest annually at the rate of six per cent. per annum, and, in order to secure the payment of the principal and interest of said bonds, executed to him a trust deed or mortgage, bearing date January 23, 1883, upon the property and franchises of the railroad company and upon the right, title, and interest which the company had or might thereafter acquire in and to the lands granted, or agreed to be granted, by the trustees of the Internal Improvement Fund by the contract of May 31, 1871. The trust thus created was accepted by Shoecraft, and to compel a performance of the contract of May 31, 1871, by the execution of a conveyance of the lands held by the trustees, and to determine the rights of others claiming interest in the lands, this suit is brought.

The conveyance to the company of the lands held by the trustees pursuant to the contract between those parties is essential to the value of the security offered for the bonds executed to the Security Construction and Trust Company and to enable the complainant to discharge the trust accepted by him. But the contract being between citizens of the State of Florida, a suit upon it could not be maintained by the railroad company in the Circuit Court of the United States, and therefore could not be maintained by its assignee, the complainant. Section 629 of the Revised Statutes, which was in force when the suit was commenced, declares that "no circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." The terms used, "the contents of any promissory note or other chose in action," were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not happily chosen to convey this meaning, but they have received a construction substantially to that purport in repeated decisions of this court. They were so construed in the recent case of Corbin v. County of Black Hawk (105 U. S., 659), where the subject is fully considered, and the decisions cited. There a suit brought to enforce the specific performance of a contract was held to be a suit to recover the contents of a chose in action, and therefore not maintainable, under the statute in question, in the Circuit Court of the United States, by an assignee, if it could not have been prosecuted there by the assignor had no assignment been made.

It is contended, however, that the complainant is not the assignee of the contract of May 31, 1871, but a mortgagee in trust of the lands mentioned therein, and can therefore maintain the suit by reason of his citizenship in New York. We cannot assent to this position. It is true the complainant is a mortgagee in trust of such interest as the mortgagor had in the lands, but he brings the suit, not to foreclose the mortgage, but as one having a beneficial interest in the contract, and consequently a right to enforce it. The object of the suit is to perfect the title to the lands mortgaged by enforcing the performance of the contract. The deed of trust sets out in full the contract, and conveys all the right, title, and interest which the railroad company had or might thereafter acquire in and to the lands granted by the trustees by their contract of May 31, 1871. This conveyance of all right, title and, interest "in and to" the lands granted, or agreed to be granted, by the contract of sale carried with it to the complainant an interest in the contract so far as such lands were concerned—that is, the right to perfect the title to the lands by enforcement of the contract It was in legal effect the assignment of the contract itself. If he cannot enforce that contract and thus secure the title to

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the company, the deed of trust, so far as the lands covered by the contract are concerned, is worthless as a security. If he has no interest in the contract he has no standing in court to ask its enforcement, and, if he is to be regarded as an assignee of the contract under the deed of trust, he is disabled from maintaining the suit in the Circuit Court by section 629 of the Revised Statutes. He is subject to the same disability in that respect as his assignor.

Decree affirmed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

SAMUEL BENSINGER ET AL. v. THE DISTRICT OF COLUMBIA.

AT LAW. No. 28,086.

Decided February 20, 1888.
The CHIEF JUSTICE and Justice COX sitting.

1. An assessment of taxes is void which is not signed or authenticated as required by law, and does not sufficiently describe the property assessed, nor contain any mark showing whether the figures given as the amount of the assessment are intended as dollars or cents.
2. So where the law requires notice of the assessment to be given to the property holder, and there is no evidence of such notice ever having been given, the tax is void.

Petition for a writ of *certiorari*.

The case is stated in the opinion.

BIRNEY & BIRNEY for petitioner.

A. G. RIDDLE & H. E. DAVIS for defendant.

Mr. Justice COX delivered the opinion of the court.

A petition was filed in this case in which the petitioner sets forth that in July, 1887, he was desirous of ascertaining whether his property, which he describes in the petition, was free and clear of all taxes and assessments, and he made a demand on the proper officers of the District for all bills or assessments of every kind whatever charged upon the tax records of said District against his lot, and said officers thereupon rendered him a bill as follows:

To all installments of tax for water-mains	$643 00
To interest at 6 per cent. from Nov. 1, '75, to Sept. 1, '87	456 53
To advertising, 1876, 1877, 42; 1878, 20; 1879, 20	1 27
To auctioneer's fee	20
Amount sold for	1,101 00
Assessed in name of Mary J. Lambell.	
Interest at the rate of 10 per cent. per annum from day of sale to date of redemption.	
Amount required to redeem	$1,101 00

The petition further sets forth that the authorities of the District of Columbia threaten to sell the lot if the taxes are not paid. He claims that the taxes were illegally assessed upon his lot, and asks the court to issue a *certiorari* commanding the District of Columbia to certify to this court copies of each and every part of the official record of Timothy Lubey, the late water registrar of said District, relating in any manner to the assessment of a water-main tax by him against the west part of lot two (2), in square 744, or to a notification of said tax given by him to the owner or agent of said property; and also a copy of said notification, with the signature to the assessment and also to the notification, and a copy of the record evidence of the service of said notification, and the date or dates of any sale or sales made, of said property, by the District of Columbia. The writ was issued on the 13th of September, 1887. The return of the District is made to the writ and filed January 17, 1888. There is an answer on the part of the District and also an unsworn statement of fact which is hardly, properly, a part of the record.

The act of the Legislative Assembly of the District of Columbia, under which this water-main tax was laid, provides that there shall be levied a special tax, per square foot, upon every lot or part of lot which is upon any street in which a main water-pipe may thereafter be laid and fire-plugs erected, which tax shall be assessed by the water registrar within thirty days after such water-main and fire-plugs shall have been laid or erected, of which the water registrar shall immediately notify the owner or agent of the property, setting forth in said notice the number of the square in which it is situated, the property on which said tax is assessed, and the street on which it fronts; that the tax shall be due and payable in four equal installments, the first installment to be due thirty days from the date of the notice, and the other three annually, one in each year, and said installments shall bear interest at the rate of 6 per cent. per annum, commencing from the date of the notification of the assessment.

The petition avers that no such assessment was ever made by the water registrar in the first place, and secondly, that he never had any notice if there was such an assessment made; and therefore he objects to paying the interest. It is not claimed that the period of thirty days in which the tax was to be assessed was mandatory or anything more than merely directory. The petitioner does not deny that the water registrar may now reassess these taxes, but he denies that the original assessment was valid and that he is liable for the interest. He professes himself to be willing to pay the principal amount of the taxes.

When we look at the record of the assessment we find this:

(Title of Book.) Assessment of Water Tax, Vol. 7. W. R. O. Assessment of Water Tax. Act approved June 23, 1873.

To whom assessed: Lambell, Mary J.

To whom transferred: Mrs. Mary J. Ripley, 2d, bet. Pa. ave. and B, N. W.

Square: 744.

Lot: Of 2.

Front feet: West 428.8.

Square feet: 51,440.

Fronting on: N, south.

When assessed: November 1, 1875.

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Amount of tax: 6.43.
Abatement of 6 per cent.
1st installment, when paid, amount:
2d installment, when paid, amount:
3d installment, when paid, amount:
4th installment, when paid, amount:
Total amount received:
Remarks:

There is no signature. The only possible authentication is that it is found in a book in the office of the District. It is not signed or authenticated by the water registrar as the law requires it to be. We know nothing about it except from the unsworn statement of a clerk in the Commissioners' office, to the effect that it was made under the authority of Timothy Lubey, and that to the best of his knowledge and belief, notice was sent. But there is no evidence that any notice was sent. There is a defect, therefore, in the authentication of the whole assessment, and there are other intrinsic defects. The advertisement of this property for sale would have to correspond with the assessment, and it would be impossible for a sale made on such an advertisement to be valid, because of the uncertainty of the description. The lot is not described at all, except as "Lot: Of 2." There are some elements supplied by which one might figure out the form and location of the lot from the front and the area; but that is all. Then the amount of the tax is stated at 6.43. It may be six dollars and forty-three cents or six hundred and forty-three dollars. We don't know. There is no dollar mark, and it could not be correctly read six hundred and forty-three dollars, because there is a period after the six. Obviously, an advertisement of that lot for sale would be defective for want of certainty in the description. The whole assessment must be considered as defective, and we think that the petitioner's application to have it quashed must be granted, and it is so ordered.

THADDEUS A. HOPKINS ET AL.
v.
BALTIMORE AND POTOMAC R. R. CO.
AT LAW. No. 27,779.

Decided March 12, 1888.
The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

1. The act of Congress permitting the Baltimore and Potomac Railroad Company to lay down in the streets of the city of Washington, at or near its depots or stations, "as many tracks as its president and board of directors may deem necessary" does not authorize the company to use those tracks for the purpose of shifting cars and making up and breaking up trains in the conduct of its general business; but the use of such tracks must be limited and restricted to the necessary operations of said railroad, connected with the careful use of the depot or station at or near which the said tracks are laid.

2. Any person having the right of possession, but not the absolute ownership of real estate, may maintain an action for personal annoyances resulting from a nuisance committed in an unlawful use of the public street upon which the property abuts.

3. The decision of this court in the cases of Anderson and Neitzey v. The B. and P. R. R. Co., 5th Mackey, 31, commented on and approved.

Motions for new trials on exceptions taken by defendant in actions to recover damages for private nuisance, in which the plaintiffs recovered judgments.

The case is stated in the opinion.

S. S. HENKLE and SAM'L MADDOX for plaintiffs.

ENOCH TOTTEN for defendant.

Mr. Justice HAGNER delivered the opinion of the court.

These seven cases, which have been argued together, were instituted to recover damages in respect of divers nuisances alleged to have been occasioned by the unlawful use of Maryland and Virginia avenues, by the trains of the defendant company, in front of the dwellings of the several plaintiffs fronting on those avenues.

In each case a verdict was rendered for the plaintiffs, and the appeals are taken from the rulings of the court below against the objection of the defendant.

The instructions given by the trial justice in the several cases at the instance of the several plaintiffs are identical, except that in the cases of Richards and Strobel additional propositions of law were presented and given to the jury touching the technical objections interposed by the defendant to the title of those plaintiffs to the property on Virginia avenue occupied by them.

The justice below, in framing the four instructions appearing on the pages 25 to 30 of the printed record in the Hopkins case, appears to have conformed entirely to the decision of this Court in General Term in the cases of Neitzey and Anderson against this company, reported in 5 Mackey, p. 31. In those two cases the General Term approved the instructions given by the justice below, with the exception that it was held error to have included as an element of annoyance in the nuisances complained of the loud talking and profanity alleged to have attended the loading and unloading and shifting of the defendant's cars on Maryland avenue. In its opinion the General Term stated it saw very little to find fault with in the rulings below, and it pointed out no other error in the instructions granted on behalf of the plaintiffs.

The first of the instructions granted at the instance of the plaintiffs in the present cases, in its substantial features, is identical with that recited in 5 Mackey, p. 44, except that it omits all reference to the alleged noises from the profane swearing; and it is therefore directly in conformity with the decision of the General Term there reported.

The second instruction in the present cases was addressed to the nuisances alleged to have been caused by the company in permitting its locomotive engines to stop on the avenue between the streets named, in front of the plaintiffs' dwellings and "to remain there longer than was necessary in the conduct of its through business, and to the full and careful use and enjoyment of its freight depot or station," "making offensive noises and giving forth soot, cinders, steam, and disgreeable odors," &c. And the third instruction related to the storage in front of plaintiffs' dwellings of loaded and unloaded cars, in filthy condition, emitting filthy smells of guano, manure, &c.

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In 5 Mackey the court announced distinctly that this company is not authorized under its charter and the acts of Congress to convert the public highways of this city into freight yards. "The proper place for cars when not in use," says the court, "is the depot, station, or yard of the company; and the proper place to load and unload freight is a freight station.

"It has no right, therefore, to encumber the street with cars and to leave them there when not in use. That is an unauthorized occupation of a public highway." On page 43 it says: "But when these cars have been used for the conveyance of offensive matter so as to infect the whole atmosphere with noxious odors, and when the freight, loaded and unloaded there, consists of similar material, and the process of bringing the cars there and taking them away for the purpose of loading and unloading causes annoyance by jarring the neighboring houses, and the smoke from the engines penetrated the dwellings—all this, then, becomes more than a public nuisance; it becomes a private nuisance; so that the declaration in this case sets forth clearly an actionable nuisance—the occupation of this street in a way that was offensive and injurious to the private property in the neighborhood and to the persons occupying it—and the proof clearly makes a case. Therefore no occupation of the street for these purposes can be "reasonable." P. 42-43.

The first, second, and third instructions above referred to, are in entire accordance with these views, and the action of the court in granting them is therefore affirmed.

The fourth instruction had a further and more especial reference to the use of Maryland avenue by the company for shifting and making up their freight trains, in addition to their alleged loading and unloading of freight and the alleged leaving the cars standing in the avenue for an unreasonable time. We hold the only use that can lawfully be made of Maryland avenue by the company in shifting and making up its trains must be confined to such use as may be reasonably necessary for the purpose of carefully taking its cars into the freight station, or of carefully taking the cars out of the station, to place them in freight trains on the track. To authorize the use of the avenue as a general shifting-ground would be to subject it to a use that could not have been contemplated by the legislature when it authorized this company "to extend their lateral branch," "by way of Maryland avenue to the Long Bridge." Such an occupation would constitute a nuisance more grievous and far more dangerous than the others complained of and would almost amount to a practical condemnation of this part of the avenue as the private property of the company, which would then enjoy its undisturbed use as a freight yard, free from the charges for public dues or for purchase-money or rent that other public corporations and individuals are compelled to pay when they seek to acquire the right to secure lands for such purposes. A railroad company may and should possess itself of proper accommodations on its own property, where this dangerous process of shifting and making up trains may be conducted in safety, without continual risk and inconvenience to citizens, who have the right at all times to cross and travel the street and send their children and servants along them on lawful errands without peril or delays, and to enjoy some intervals of quiet from the noises of movements that should be conducted within the proper inclosures of this company, in more secluded portions of the city, where ampler accommodations could be found than is now afforded within the freight station on Ninth street, which is admitted to be insufficient for that purpose.

We think the fourth instruction was a correct exposition of the law, and it is affirmed.

The fifth instruction as to the measure of damages is not objectionable.

It is unnecessary to consider in detail the numerous prayers presented by the defendant in these cases. Several of them were granted by the court below, which gave to the company the benefit of a very liberal construction of some of the propositions they severally presented. We proceed to notice some of those rejected by the court below which were not distinctly considered by the General Term in 5th Mackey.

We think the court was right in refusing the prayers which declared that the property-owners on Maryland avenue, between Ninth and Tenth streets, were not entitled to recover in respect of any of the nuisances complained of that might have occurred "between the west line of Ninth street and the east line of Tenth street." If this proposition was correct neither could the property-owners between Ninth and Eighth streets and between Tenth and Eleventh streets recover for nuisances occurring in the beds of Ninth and Tenth streets; and there would be no accountability on the part of the railroad company for such nuisances in those streets where they cross the avenues, to any citizen, however seriously he might be injured by their commission.

The eleventh prayer offered by the defendant in the Hopkins case, and which is repeated in the other cases, *mutatis mutandis*, is as follows:

"The space of sixty feet inclosed by the two lines of curb by the Board of Public Works, within which are the tracks of the railroad, and between the streets running north and south, was set aside by the proper authorities of the District of Columbia for railroad purposes; and the plaintiff cannot recover under the pleadings in this case for any discomfort to him or his family or other injury caused by the loading or unloading of cars at that place."

This was properly refused. No such immunity from responsibility for nuisances committed within the inclosed spaces could properly result from the action of the Board of Public Works, assumed in the prayers to have been performed by these officials.

In the Knight case and in several others the court refused to give this instruction:

"The defendant possessed the lawful right to carefully use the tracks in front of the plaintiff's premises on Maryland avenue, between Eleventh and Twelfth streets, so far as the same were necessary or convenient for the lawful and careful use of its yard and cattle-chute therein at Fourteenth street."

We were referred to the ruling of the justice below in the Neitzey case, in which, as it is contended, the court granted a similar instruction. In the latter case the right to such use was con-

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fined to such as was *necessary*, and was not extended to occasions of its *convenience* also. But upon the case before us we think both instructions should have been refused, since nothing appears in the records before us to support the conclusion that the "yard and cattle-chute therein at Fourteenth street" is such a station or freight depot as the company has been authorized by act of Congress to connect with its railroad tracks in the manner appearing in the cases.

No verbal testimony is contained in the records describing particularly the mode of access to the yard referred to. But the carefully prepared plat offered by the defendant at the trial below and made part of the record here shows that the lot is approached from the track laid within the central sixty-foot space, over rails laid from the northern side of that space, in a northwestwardly direction to the foot-pavement of Maryland avenue, and thence across the bed of Thirteen-and-a-half street into the lot which lies between the last-named street and Fourteenth street. The decision of the Supreme Court of the United States in the recent case of the District v. Balt. and P. R. R. Co., 114 U. S., p. 460, declares that, in the absence of authorization by Congress, this company would not have the right at its pleasure to leave the bed of Maryland avenue and cross with its tracks any street in the city for the purpose of entering a lot it may propose to use as a depot. The court there held that the right to use the streets of the city for any other than ordinary purposes must proceed from Congress; that in the absence of express authorization by Congress the defendant company has no power to lay its track across any street or to leave Maryland avenue on its way from Ninth street to the Long Bridge; and that, to use its own language, "When this company wishes to depart in any direction from the line of its present track, as prescribed for it by acts of Congress, it must obtain permission to do so from that body; and that Congress, and not the court or the company, is the judge of the expediency or necessity of such change and of the manner in which the public good requires it to be made and the safeguard which shall accompany it." If the plat correctly represents the state of facts the decision of the Supreme Court would seem to be conclusive of this point.

The other prayers offered in behalf of the defendant contained either express negations of the former utterances of this court or contradictory propositions substantially the converse of the instructions granted by the court below in the present cases, which we have approved; and it is therefore unnecessary to say more than that they were properly refused.

In the cases of Strobel and Richards the further objection was made that neither of these plaintiffs held the entire title to the dwellings they occupied on Virginia avenue, but that each was in possession merely as the widow of her deceased husband.

As such, of course, neither could recover for any injury sustained by other persons interested in the estate nor for any inconvenience to any other inmates of the house.

This was distinctly held to the jury by the justice below in each case. It cannot be contended that either widow was a trespasser; and having the right of possession, she may well maintain an action for the personal annoyance to herself resulting from the grievances complained of.

The rulings in all the cases are affirmed.

THE COURTS.

Supreme Court of the United States.

March 19.

James Lawrence, of Cleveland, Ohio; William A. Davidson, of Cincinnati, Ohio; John C. Hale, of Cleveland, Ohio; Malcolm G. Jeffris, of Jamesville, Wis.; William H. Lamar, of Washington, D. C.; W. S. Rann, of Fredonia, N. Y., and W. E. Blake, of Burlington, Iowa, were admitted to practice.

10. Dolbear v. Am. Bell Tel. Co. Decree affirmed with costs.

361. The Molecular Tel. Co. v. The Am. Bell Tel. Co. et al.

362. The Am. Bell Tel. Co. v. The Molecular Tel. Co. Decree reversed so far as it is against the American Bell Telephone Co. on the fifth claim of the patent of January 30, 1887, and is affirmed in all other respects; costs in this court to be paid by the Molecular Telephone Co. et al., and cause remanded with directions to enter a decree in conformity with this decree and with the opinion of this court.

709. The Clay Com. Tel. Co. et al. v. The Am. Bell Tel. Co. et al. Decree affirmed with costs.

770. The People's Tel. Co. et al. v. The Am. Bell Tel. Co. et al.

771. The Overland Tel. Co. et al. v. The Am. Bell Tel. Co. et al. Decrees affirmed with costs. Opinion in the telephone cases by Chief Justice Waite. Dissenting, Justice Bradley, Justice Field, and Justice Harlan. Justice Gray was not present at the argument and took no part in the decision of these causes.

163. The Hannibal and St. Jos. R. Co. v. The Mo. River Packet Co. Judgment affirmed with costs.

1210. The Sou. Development Co. of Nev. v. Silva. Decree affirmed with costs.

143. Clement v. Packer. Judgment reversed with costs.

153. Cassell v. Dutch et al. Appeal from the Supreme Court of the District of Columbia. Decree in General Term reversed with costs and cause remanded with a direction to affirm with costs the decree of the Court in Special Term.

169. Hoskins v. Fisher. Decree reversed with costs.

186. Origet v. The U. S. Judgment affirmed.

178. Friedenstein v. The U. S. Judgment affirmed.

537. Tilghman v. Proctor.

548. Proctor v. Tilghman. Decree reversed.

38. The N. O. Water Works Co. v. The La. Sugar-Refining Co. Writ of error dismissed for the want of jurisdiction.

948, 949, and 950. Kreiger, sr., v. The Shelby R. Co. Writs of error dismissed for the want of jurisdiction.

1232. The Dale Tile Manf'g Co. v. Hyatt. Judgment affirmed with costs.

1255. Felix v. Scharnweker. Writ of error dismissed for the want of jurisdiction.

22. Wall v. Bessell. Decree affirmed with costs.

182. Weir v. Morden. Decree affirmed with costs.

750. Hartranft v. Langfeld. Judgment affirmed with costs and interest.

1324. The Nat. B. of Redemption v. The City of Boston. Judgment affirmed with costs.

798. Bowman v. The Chic. and Northwestern R. Co. Judgment reversed with costs.

151. The City of Chicago v. Taylor. Judgment affirmed with costs and interest.

126. Sage v. The Memphis and L. R. R. Co.

127. The Mem. and L. R. R. Co. v. Sage. Decree reversed.

74. Cunningham v. Norton et al. Judgment reversed with costs.

80. The Willamette Iron Bridge Co. v. Hatch. Decree on the bill of review reversed with costs.

100. Davison v. Davis. Decree affirmed with costs.

167. Miller et al. v. Butterfield et al. Judgment affirmed with costs and interest.

189. The Pembina Consol. Silver Min. Co. v. The Com. of Penn. Judgment affirmed with costs.

194. Maynard v. Hill et al. Decree affirmed with costs.

187. Bowerman et al. v. Rogers et al. Judgment affirmed with costs and interest.

1325. The W. U. Tel. Co. v. The Att'y-Gen'l of Mass. That part of the decree which awards the injunction reversed with costs.

887. The U. S. v. The San Jacinto Tin Co. et al. Decree affirmed.

132. Beecher v. The Cheshire R. Co. Judgment affirmed with costs.

70. Tompkins v. The L. R. and F. Smith R. Co.

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71. Williams v. The L. R., Miss. R. and Tex. R. Co. et al. Decrees affirmed with costs.
698. Potts v. The U. S. Judgment affirmed.
158. The U. S. v. Burchard. Judgment reversed and cause remanded.
1332. Burchard v. The U. S. Appeal from the Court of Claims.

March 20.

F. O. Clark, of Marquette, Mich., was admitted to practice.
259. The Sou. Pac. R. Co. v. The County of Santa Clara.
260. The Cen. Pac. R. Co. v. The County of Santa Clara.
261. The Sou. Pac. R. Co. v. McCusker.
262. The Sou. Pac. R. Co. v. McCusker.
489. The Sou. Pac. R. Co. v. The City of Los Angeles.
951. The Cen. Pac. R. Co. v. The United Nickel Co. Dismissed with costs.
1391. Jones et al. v. Nichols. Docketed and dismissed with costs.
1088. Roberts v. Lamb. Motion to dismiss submitted.
107. The East Tenn., Va. and Geo. R. Co. v. The Sou. Tel. Co. Return to rule to show cause.
467. De La Mathe v. Angus. Dismissed with costs.
1366. The U. S. v. Weld et al. Submitted pursuant to twentieth rule.
970. Whitbeck v. The Mercantile Nat. Bank of Cleveland. Argued.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 16th, 1888.

In the case of **Mary Jane Gass**, Executrix of **William Rea Gass**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

12 Test: DORSEY CLAGETT, Register of Wills.
No. 2649. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Nathan B. Clarke**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.

12 HARRIET E. CLARKE, Ex'x, 301 M st. n. w.
No. 3000. Ad. D. 13. F. L. Freeman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 16th, 1888.

In the case of **Samuel C. Palmer**, Executor of **Sarah C. De Hart**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

12 Test: DORSEY CLAGETT, Register of Wills.
No. 2410. Ad. D. 12. Gordon & Gordon, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of March, 1888.

Mary L. Bowers v. **David N. Bowers.** } No. 10,948. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **David N. Bowers**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the grounds of non-support and willful and uninterrupted desertion for over three years from the filing of this petition.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
12 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Allie W. Pickerill v. **Frank B. Pickerill.** } No. 11,023. Docket 28.

The 19th day of March, 1888.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, **Frank B. Pickerill**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce from bond of marriage on ground of desertion.

By the Court. W. S. COX, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
12 By M. A. CLANCY, Ass't Clerk.

CHANCERY SALE OF VALUABLE IMPROVED REAL ESTATE ON THE NORTHWEST CORNER OF PENNSYLVANIA AVENUE AND FOUR-AND-A-HALF STREET NORTHWEST, KNOWN AS NOS. 451, 453, 455 AND 457 PA. AVE.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the 29th day of October, 1886 (as amended by order passed on the 15th day of March, 1888), in Equity Cause, No. 9937, wherein Edward *F.* Beale and others are complainants, and Gertrude Wheeler and others are defendants, I shall sell, to the highest bidder, in front of the premises, on MONDAY, the 2ND DAY of APRIL, 1888, at FOUR O'CLOCK P. M., the following described parcels of land in the city of Washington, District of Columbia, known as lots 28 and 29 of James H. Saville, trustee's, subdivision of part of original lot 1 in square 491, as the same is recorded in Book 15, page 151, of the records of the Surveyor of the District of Columbia.

Also all the right, title, and interest of the parties to this suit in and to the parcel of land, described as follows: Beginning at a point on the west side of Four-and-a-half street, distant 105.33 feet north of the north line of Pennsylvania avenue, and running thence west, in a line perpendicular to Four-and-a-half street, 40.55 feet; thence northeasterly, in a line perpendicular to the course of Pennsylvania avenue, 19.29 feet; thence southeasterly 36.35 feet to a point on the west line of Four-and-a-half street, distant 9 feet north of the place of beginning; thence south, along the west line of Four-and-a-half street, 9 feet to the place of beginning.

Said sub lot 28 is situated on the northwest corner of Pennsylvania avenue and Four-and-a-half street, having a frontage of 55 feet and 8 inches on Pennsylvania avenue, by a depth of 105 feet and 4 inches on Four-and-a-half street. It is improved by a three-story brick building.

Said sub lot 29 adjoins the preceding lot on the west, having a frontage of 18 feet on Pennsylvania avenue, by an average depth of 87.22 feet, and is improved by a two-story brick building.

The three parcels will first be put up for sale as a whole, and, if not sold, then each parcel will at once be offered separately.

Terms of sale, as prescribed by the decree as amended, are as follows: One-third of the purchase-money in cash and the balance in two equal installments, payable in one and two years, respectively, from the day of sale, or all cash, at the option of the purchaser. The deferred payments shall be secured by a deed of trust upon the premises sold and bear interest from the day of sale at the rate of six per cent. per annum, payable semi-annually. A deposit of $500 is to be made when the property is sold, if it be sold as a whole. If sold in parcels a deposit of $50C will be required on lot 28 and $250 on lot 29, and $100 on the remaining parcel of ground. If the terms of sale be not complied with in ten days from day of sale the Trustee reserves the right to resell at the risk and cost of the defaulting purchaser after five days' previous advertisement. All conveyancing at the cost of the purchaser or purchasers.

JAMES H. SAVILLE, Trustee,
12 1419 F Street N. W.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of March, 1888.

W. G. Raymond v. Lucy Raymond. } In Equity. No. 10,816. Docket 27.

On motion of the plaintiff, by Mr. J. Ambler Smith, his attorney, it is

Ordered, that the defendant cause her appearance to be entered herein or on before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce *a vinculo matrimonii* from the defendant.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
10 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anthony H. Janus, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.
11 FRANKLAND JANNUS, Ex'r, 938 F st. n. w., City.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1888.

Georgeanna Deal v. James Henry Deal. } No. 10,895. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, James Henry Deal, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the grounds of adultery and wilful desertion for over three years before the filing of this petition.

By the Court. W. S. COX, Justice, &c
True copy. Test: R. J. MEIGS, Clerk, &c.
10 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity, March 1, 1888.

Mary Rose v. Margaret Cumberland et al. } 10,916. Eq. Doc. 27.

On consideration of the report of James M. Johnston, trustee, of the sale of part of lot 22, in square No. 534, particularly described in the proceeding, to William G. Stotter, for $1,050.00, cash, it is ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of April, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
10 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 29th day of February, 1888.

Carrie C. Davis et al. v. Robert V. McKenny et al. } No. 10,968. Docket 27.

On motion of the plaintiffs, by Mr. S. T. Thomas, their solicitor, it is ordered that the defendants, Frederick C. Albright, Robert F. Pope, George E. Pope and Addie Talburt, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell the real estate of which Edward McKenny died seized, for the purpose of paying debts.

By the Court. W. S. COX, Justice, &c.
True Copy. Test: R. J. MEIGS, Clerk, &c.
10 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Rebecca Cooper, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of February, 1888.
10 WM. BRYAN, Ex'r, 608 Penn. ave.
No. 2679. Ad. D. 13. E. H. Thomas, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphan's Court business, Letters of Administration c. t. a. on the personal estate of Henry H. Keitz, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.
10 CHRISTIEN KULTZ,
Adm'x c. t. a., 507 11th st. n. w.
No. 2926. Ad. D. 13. C. A. Walter, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The sixth day of March, 1888.

Charles W. Arndt v. Matilda Arndt. } No. 10,915. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, Matilda Arndt, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce, upon the grounds of non-support and willful desertion for over two years from the filing of this cause.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of March, 1888.

R. J. Allen, Son & Co. v The Anglo-American Insurance Company. } No. 27,361. Docket 31.

On motion of the plaintiffs, by Birney & Birney, their attorneys, it is ordered that the defendant, The Anglo-American Insurance Company, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to condemn certain credits to the payment of a debt claimed by the said R. J. Allen, Son & Co. from said Anglo-American Insurance Compay.

By the Court. A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk.
10 By J R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 9, 1888.

In the matter of the Estate of Catharine E. Beall, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, to be granted to Robert S. Werden, of said District, has this day been made by Joseph N. Plowman and Marion L. Wilson.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of March, 1888, next, at 1 o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

By the Court. W. S. COX, Justice.
11 Test: DORSEY CLAGETT, Register of Wills.
Edwards & Barnard, Proctors.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of March, 1888.

Emmons S. Smith v. George C. Lewis. } At Law, No. 28,435. Docket 32.

On motion of the plaintiff, by Mr. Chapin Brown, his attorney, it is ordered that the defendant, George C. Lewis, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

(The object of this suit is to collect the claim of the said plaintiff against the said defendant for $156.00, for the rent of house No. 1026 8th street (N. W.), Washington, D. C., from June 1st, 1887, to August 16th, 1887, at $62.50 per month; and for $2.75 advanced by the said plaintiff for the said defendant and for his use.)

Provided that a copy of this notice be published in the Evening Star once a week for each of three successive weeks before the said rule-day.

A. B. HAGNER, Asso. Justice.

True copy. Test: R. J. MEIGS, Clerk, &c.
11 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Hillery Jordan v. John H. King, Adm'r, et al. } In Equity. No. 10,624.

W. Preston Williamson, trustee in this cause, having reported a sale of the real estate and premises described in these proceedings to Mrs. Cornelia Plumley, for the sum of $390.00, it is, this 9th day of March, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 9th day of April, A. D. 1888.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 9th day of April, A. D. 1888.

And it is further ordered that this cause be, and it hereby is, referred to the Auditor to state the trustee's account.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
11 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Michael T. Kelliher, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.
11 MARY E. KELIHER, Adm'x, cor. 34th & P sts.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Obediah Kimmell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1888.
11 JOSEPH GAWLER Ex'r, 1734 Pa. ave. n. w.
No. 2942. Ad. D. 13. N. H. Miller, Proctor.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Agnes Maria Smith, late of the District of Columbia, deceased.

All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of February, 1888.
10 BLAIR LEE, Ex'r,
Cor. 4½ street and Louisana avenue,
No. 2935. Ad. D. 13. Washington, D. C.

Legal Notices.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of William D. Fuller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.
10 ARTHUR MAC ARTHUR, Adm'r c. t. a.,
1201 N st. n. w., Washington, D. C.
No. 2278. Ad. D. 12. Wm. F. Mattingly, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Albany, New York, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Cora Livingston Barnard Mercer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of February, 1888.
10 RICH'D VARICK DEWITT,
Executor of the last will and testament of
Cora L. B. Mercer.
No. 2986. Ad. D. 13. James Lowndes, Proctor, 1505 Pa. ave.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of March, 1888.

Clara A. Engelhardt v. Frank Engelhardt. } No. 11,019. Docket 28.

On motion of the plaintiff, by Mr. Leon Tobriner, her solicitor, it is ordered that the defendant, Frank Engelhardt, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce on the ground of desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
11 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 9th, 1888.

In the matter of the Estate of Ann Jones, late of Washington City, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Samuel C. Palmer.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why the said Will and four Codicils thereto annexed should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
11 Test: DORSEY CLAGETT, Register of Wills.
H. O. & R. Claughton, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 9, 1888.

In the case of Sallie Shea, Administratrix of Philip Shea, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 30th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

11 Test: DORSEY CLAGETT, Register of Wills.
No. 947. Ad. D. 9. Edwards & Barnard, Proctors.

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ESTABLISHED 1874.
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VOL. XVI. - - - - - - - No. 13
WASHINGTON, D. C. - - - - MARCH 28, 1888

THE LATE CHIEF JUSTICE.

The first term of the Supreme Court of the United States was held in the city of New York, beginning in February, 1790. Within two years of its centennial died its seventh Chief Justice, officially and by statute designated the Chief Justice of the United States.

Morrison Remich Waite, the son of a distinguished lawyer who became the Chief Justice of Connecticut, was born at Lyme, in that State, November 29, 1816. He graduated at Yale of the class of 1837 with Senator Evarts, Edwards Pierrepont, the younger Silliman, and other distinguished men. It is said he began his studies in his father's law office; was married September, 1840, to Amelia, daughter of Samuel Selden Warner, of Lyme, and removed the same year to Maumee, near the mouth of the river of that name, Lucas county, Ohio, where he was admitted to the bar and began the practice of the law with Samuel Young as his senior. The firm soon removed to the rising town of Toledo, at the river's mouth, which, nearly equidistant between Cleveland and Detroit, soon became one of the active lake ports.

The State was rapidly emerging from the wide ruin of 1837, and taking on the better usages of the older Eastern States in business methods and finance. The commerce of the lakes soon became in importance a thing of wonder to strangers. Congress extended the maritime laws to the lakes, divided Ohio into two districts, with a court at Cleveland. The bar of Northern Ohio was early distinguished for learning and hard-headed ability. Eloquence, oratory, were not cultivated. The law, the logic, of special pleading, of sinewy argumentation were much patronized. The young barrister found the field fully occupied and the competition close and sharp.

It is saying much for him that at this bar his rise was rapid and permanent. He was soon in possession of important maritime cases, and later became the adviser of railroad companies, appearing in most of the courts along the lake line from Cleveland to Detroit, as in many of the larger inland shire towns.

The Whig party, oftener in the ascendency in the State, was put in a hopeless minority by the phenomenal rise of the Freesoil party of the Western Reserve in 1848. That region (the eleven northeast counties, including Lucas), four-fifths Whig, became two-thirds Freesoil in a day. Mr. Waite, a Whig, was by nature conservative, and remained with his party. His personal popularity was such that, being pushed forward unwillingly at the State election of 1849, he was easily elected as a Whig to the Ohio House of Representatives. The House for ability ranked high, and Mr. Waite was at once recognized as one of the ablest men of that body.

The Whig party disappeared in 1852, and he necessarily became a Republican of the thoughtful class, in 1856.

In 1862 he was, contrary to his wish, a candidate for Congress against General Ashly, whose course in the House lost him the confidence of many of that Congressional district.

The Democrats had a candidate in the field, and although Mr. Waite had a large majority over both of his competitors in the city of Toledo, he failed of election. A most earnest supporter of the war, he declined a seat on the bench of the Ohio Supreme Court and remained in the active practice of law, in which he had for years ranked with the most eminent, as with the best-known lawyers of the State. Certainly he had no superiors and few equals.

In the autumn of 1871 he was appointed one of the three counsel—Messrs. Cushing, Evarts, and Waite—to conduct the great cause of the United States *vs.* Great Britain, to recover the Alabama claims before the international arbitration of Geneva in 1872. His argument on one of the main points, the coaling by the rebel cruisers in British ports, was conclusive of the case and secured for him more fame in Europe than in his own country, where until then he was unknown out of his own State.

Resuming his profession on his return home, he was elected to the convention for revising the State constitution, which sat in 1873, of which he was unanimously made the president. While filling this position, to his surprise, his name was sent to the Senate by President Grant to succeed Salmon P. Chase as the Chief Justice of the United States.

It is said that while stationed at Detroit Captain Grant strayed into court one day where Mr. Waite was trying a case, and carried away a lasting impression of the young lawyer's strength and vigor. Confirmed, the new chief was inducted into office March 4, 1874, and within the year, during which, on motion of

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Caleb Cushing, he was admitted to the bar of the court. He entered at once upon his high duties, the head, in fact, as by the Constitution, of the national tribunal. Then in his fifty-eighth year, of perfect health and unimpaired vigor, he gave himself at once unreservedly to the vast business of his court, and so entirely, that, to those familiar with the soundness and strength of his frame and constitution, his death, largely due to his great labors, seems untimely.

A casual examination of the United States Reports, beginning in volume 19 of Wallace and running through the 36 or 37, since produced, will show that, while he decided all the numerous and various motions, everything pertaining to the working process of the court, frequently involving questions of the greatest importance and difficulty, he pronounced opinions in as many cases as any of his hard-working associates. Few men had larger capacity for the best judicial labor.

The Chief Justice was distinguished by vigor, force, and strength alike of person, character, and intellect. Of fair height, broad-shouldered, well-made form, surmounted with a large, finely molded head well-borne, a noble brow, large, remarkably fine eyes, well-featured, he was everywhere an observed figure. With a clear, sonorous, ringing voice, seldom raised above good conversational pitch, easily heard, as a lawyer, an advocate, he was distinguished by the clearness with which he saw the central controlling point of a case, the strength and certainty with which he grasped it, and the directness and force with which he unfolded and presented it to courts and juries. Colloquial in voice and manner, not a declaimer, never too fluent, without fancy or imagination, never indulging in humor or attempting wit, which he keenly appreciated in others, he was, by manly directness, clearness, and force, successful with juries and always a dangerous opponent before courts. Learned in the best sense, he certainly, in this respect, stood well with his predecessors. Widely, deeply, well-read in the law, quick, and retentive, all his acquirements were for use only—never for show—and if men were never arrested by a rare stroke of genius or a masterly reach of learning they never in any exigency found him unequal to its utmost demands.

His decisions are marked by the directness with which he opened his way to the heart of his case, the certainty of his grasp of it, and the clearness and brevity with which he disposed of it. Seemingly not very learned, the organ of his court, consciously speaking law, why need he trouble himself with what lesser courts and smaller judges may have said of the matter in hand? Try to wear their old clothes, all too small.

Why should he affect the cheap learning of much quotation and fortification? Not a *creative* judge, in the sense that Marshall and Mansfield were, he was always equal to every case, with a never-exhausted reserve of strength and power. Long underestimated as a jurist, by the steady wear of years he so grew upon the esteem of men as to be held the fit successor of the illustrious judges who presided in the court before him. His fame is to grow rather than diminish with the years. In administrative ability, the practical business tact which enables men to govern and to do things, he probably became the first of Chief Justices.

His mind, all his faculties, were under the guidance of that rare gift, common sense, that which enables the few to instinctively reach conclusions to which the common mind of intelligent men, after many siftings and shiftings, ultimately arrives, a judgment not to be reversed. This was his good genius, and never for a moment deserted him. This rare power of discriminating and combining the essences and meanings of many things, which men call judgment, was eminently his.

Of the frankest and most cordial manners, the dignity and fine bearing of the Chief Justice sat easily, and were the gift of nature, little modified by his exalted position. To attempt a descriptive inventory of his many and high qualities—so much courage, truth, reverence, soul—would be to reduce him to abstract propositions or make him a theme of meaningless adulation. Of a fine, sinewy, virile strain of men, himself one of the most manly, it would seem that most of the best qualities of his race came to him, in large measure, modified and improved by his surroundings. A rarely endowed, rarely fortunate man, never self-seeking, sought when wanted, doing well all the work that came to his hands, doing best of all that of the highest position attainable in this our Western World—doing it so well that he not only vindicated the fortune that elevated him, but by his presence, his labors in it, he added sanctities and securities to the place, if any were needed, to preserve it from the soiling presence of the unworthy.

Of him it may, without hyperbole, be said that even his casual presence in any place, for the time, made it better.

His wholly unexpected demise at his residence was a great shock to the American world. It was a great shock to the English world, where he was personally well known, honored, and admired. There was much in his person, intellect, and career to attract the attention and admira-

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tion of Englishmen, American in every fiber though he was.

The bride of his youth survives him. Two sons and a daughter inherit his name and fame. Mrs. Waite and the young lady are greatly endeared to the people of Washington, to whom the sons are strangers.

In his death every member of the Supreme Court bar, every acquaintance of his, lost a personal friend. The loss is national, and fittingly the nation mourns it.

The President by proclamation announced it. The two Houses of Congress took action worthy of the event, as did the bar of the Supreme Court. These ceremonies, however fitting and imposing, are rather for the daily press to notice.

It is our purpose to present a sketch, however faulty, of a really great lawyer for lawyers, of one whose achievements were wholly within the ranks of the bar, showing what the law can do for an able, hard-working, high-minded, pure-hearted, clean-living, God-reverencing man, and what he may accomplish with it for his nation as for individuals. His fame is a beautiful, enduring structure, with purest intent and cleanest hands quarried from the mines of the law—every stone quarried, cut, and fitted with infinite labor and care—an edifice with singleness of heart, built and dedicated to the administration of practical justice, under the best lights which men may receive, and which the real lawyer alone can fully appreciate.

A. G. R.

SUPREME COURT OF THE UNITED STATES.

REPORTED BY WM. STONE ABERT.

THE PACIFIC NATIONAL BANK OF BOSTON, by PETER BUTLER, Receiver, Plaintiff in Error,

v.

GEORGE MIXTER, HENRY M. WHITNEY, and DANIEL L. DEMMON.

PETER BUTLER, Receiver of the Pacific National Bank, Appellant,

v.

LEWIS COLEMAN, JOHN SHEPARD, GEORGE MIXTER, LUCY E. PRESCOTT, Executrix of Calvin B. Prescott, deceased; HENRY M. WHITNEY, and DANIEL L. DEMMON.

Decided February 20, 1888.

Section 5242 R. S. U. S. forbids the issuing from a State court of an attachment before final judgment against a national bank; and as the power of the circuit courts of the United States is limited under section 915 R. S. U. S. to the powers of the State courts in cases of attachment, it follows that neither have the circuit courts the power to issue the writ.

Such a writ, if issued, is absolutely void, and the bond given to secure is dissolution is also equally void.

Where an attachment is valid, but the bond given is not in all respects such as the statute requires, it may nevertheless be held good as a common-law bond, because executed for a good consideration and the object for which it was given has been accomplished.

But where there is no lawful authority to issue the writ there is no authority to take the bond. It is consequently neither good under the statute nor at common law, because there is no foundation to support it.

A suit in equity may be sustained to prevent the vexation of two proceedings on a matter which may be settled by a single suit.

In error to the Circuit Court of the United States for the District of Massachusetts.

Appeal from the Circuit Court of the United States for the District of Massachusetts.

A. A. RANNEY for plaintiff in error.

HENRY WHEELER, H. C. HUTCHINGS, A. D. FOSTER, JOSHUA D. BELL, MOORFIELD STORY, and RICHARD STONE for defendants in error.

Mr. Chief Justice WAITE delivered the opinion of the court.

All of these cases involve the same general question, and they may properly be considered and decided together. From the records it appears that the Pacific National Bank of Boston was an association for carrying on the business of banking, organized under the national-bank act. On the 20th of November, 1881, it became embarrassed and was placed in charge of a bank examiner, in whose control it remained until March 18, 1882, when its doors were opened for business with the consent of the Comptroller of the Currency.

By statute, in Massachusetts civil actions are begun by original writ, which "may be framed either to attach the goods or estate of the defendant, and, for want thereof, to take his body; or it may be by original summons, with or without an order to attach the goods or estate." Pub. Stat. of Mass. 1882, c. 161, secs. 13, 14. "All real and personal estate liable to be taken on execution . . . may be attached upon the original writ in any action in which debt or damages are recoverable, and may be held as security to satisfy such judgment as the plaintiff may recover." Sec. 38. "A person or corporation whose goods or estate are attached on mesne process in a civil action may, at any time before final judgment, dissolve such attachment by giving bond with sufficient sureties, . . . with condition to pay to the plaintiff the amount, if any, that he may recover within thirty days after the final judgment in such action." Sec. 122.

At the time the bank resumed business it was indebted to George Mixter in the sum of $15,000; to Henry M. Whitney also in the sum of $15,000; to Daniel L. Demmon in the sum of $25,000; and to Calvin B. Prescott in the sum of $5,000.

On the 24th of March, 1881, Mixter and Prescott each began a suit against the bank in the Circuit Court of the United States for the District of Massachusetts, by writ directing an attachment, to recover the amounts due them respectively. Demmon also began a suit in the

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same court and in the same way on the 28th of March to recover the amount due him, and Whitney another on the 28th of April upon the claim in his favor. At the time these suits were begun the bank had money on deposit to its credit in the Maverick National Bank and in the Howard National Bank, and the necessary steps were taken to subject these deposits to the attachments which were issued in the several suits.

The bank arranged with Lewis Coleman and John Shepard to become its sureties upon bonds to dissolve attachments in any actions that might be brought against it, and placed in their hands a certificate of deposit in the Maverick National Bank for $100,000, to be held as their protection against all liabilities which should be thus incurred. This certificate was afterwards exchanged for $121,000 of the bonds of the Nantasket Company, $20,000 of the bonds of the Toledo, Delphos and Burlington Railroad Company, and $15,000 of the bonds of the Lebanon Springs Railroad Company.

Immediately after each of the attachments in the above actions had been made the bank executed a bond to the plaintiff in a penal sum suited to the amount of the claim, with Coleman and Shepard as its sureties, reciting the attachment, and that the bank "desires to dissolve said attachment according to law," and conditioned to be void "if the Pacific National Bank of Boston shall, within thirty days after the final judgment in the aforesaid action, pay to the plaintiff therein named the amount, if any, which he shall recover in such action." Upon the execution of the bond in each case the attachment was dissolved.

After this the bank closed its doors a second time, and on the 22d of May, 1882, a receiver was appointed by the Comptroller of the Currency in accordance with the provisions of section 5234 of the Revised Statutes, and at once took possession of its assets and proceeded to wind up its affairs.

When the receiver was appointed he found the several suits which had been commenced still pending. In the cases of Mixter, Whitney, and Demmon he appeared, answered for the bank, filed motions to discharge the attachments and motions to dismiss the suits. His motions were all overruled, and, his defenses not being sustained, judgments were rendered against the bank in each of the cases for the amounts found to be due the several plaintiffs respectively. For the review of the action of the court in these cases the writs of error which are now under consideration were brought.

The suit of Prescott still remains undisposed of in the Circuit Court.

Failing in his motions and in his defenses at law, the receiver filed a bill in equity in the Circuit Court against the several attaching creditors and the sureties on the bonds given to dissolve the attachments, the object of which was to reduce to his possession the securities which were held by the sureties for their protection against liability and to restrain the several attaching creditors from enforcing the attachment bonds on the ground, among others, "that the attachments made in said actions were unauthorized, illegal, and void." This bill was dismissed by the Circuit Court (22 Fed. Rep., 694), and from that decree the appeal, which is now one of the subjects of consideration, was taken.

In the view we take of the case the most important question to be considered is whether an attachment can issue against a national bank before judgment in a suit begun in the Circuit Court of the United States. Section 5242 of the Revised Statutes of the United States contains this provision: "No attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court." The original national-bank act contained nothing of this kind, but the prohibition first appeared in the act of March 3, 1873 (c. 269, sec. 2, 17 Stat., 603), as a new proviso added to sec. 57 of the act of June 3, 1864 (c. 106, 13 Stat., 116). That section was originally as follows:

"That suits, actions, and proceedings against any association under this act may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided, however*, That all proceedings to enjoin the Comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located."

The amending act was as follows:

"That section 57 . . . be amended by adding thereto the following: '*And provided further*, That no attachment, injunction, or execution shall be issued against such association, or its property, before final judgment in any such suit, action, or proceeding in any State, county, or municipal court.' "

Section 52 of the original national-bank act was as follows:

"That all transfers of the notes, bonds, bills of exchange, and other evidences of debt owing to any association, or of any deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, with a view to prevent the application of its assets in the manner prescribed by this act, or with a view to the preference of one creditor to another, except the payment of its circulating notes, shall be null and void." 13 Stat., 115.

This was evidently intended to preserve to the United States that "first and paramount lien upon all the assets of such association" which was given by sec. 47 as security for the repayment of any amount expended by them to redeem the circulating notes, over and above the proceeds of the bonds pledged for that purpose, and to place all the other creditors on that equality in the distribution of the assets of an insolvent bank which was clearly provided for in sec. 50, where the Comptroller of the Currency is required to make ratable dividends of the proceeds of the assets of the association

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realized by the receiver "on all such claims as may have been proved to his satisfaction, or adjudicated in a court of competent jurisdiction." National Bank v. Colby, 21 Wall., 609, 613.

In the revision of the Statutes sec. 52 of the original act, and the amendment of sec. 57 adopted in 1873, relating to attachments and injunctions in State courts, were re-enacted as sec. 5242, the amendment of sec. 57 being put in the revision at the end of what had been the original sec. 52. As the Revised Statutes were first adopted the proviso of sec. 57, which related specially to proceedings to enjoin the Comptroller, was re-enacted as sec. 736, but all the rest of the original section was left out. That omission was, however, supplied by the act of February 18, 1875 (c. 80, 18 Stat., 316, 320), which re-enacted it as part of sec. 5198, putting it at the end of that section as it originally stood in the revision.

The fact that the amendment of 1873 in relation to attachments and injunctions in State courts was made a part of sec. 5242 shows the opinion of the revisers and of Congress that it was germane to the other provision incorporated in that section, and was intended as an aid to the enforcement of the principle of equality among the creditors of an insolvent bank. But however they may be, it is clear to our minds that, as it stood originally as part of sec. 52 after 1873, and as it stands now in the Revised Statutes, it operates as a prohibition upon all attachments against national banks under the authority of the State courts. That was evidently its purpose when first enacted, for then it was part of a section which, while providing for suits in the courts of the United States or of the State, as the plaintiff might elect, declared in express terms that if the suit was begun in a State court no attachment should issue until after judgment. The form of its re-enactment in the Revised Statutes does not change its meaning in this particular. It stands now, as it did originally, as the paramount law of the land that attachments shall not issue from State courts against national banks, and writes into all State attachment laws an exception in favor of national banks. Since the act of 1873 all the attachment laws of the State must be read as if they contained a provision in express terms that they were not to apply to suits against a national bank.

The prohibition does not in express terms refer to attachments in suits begun in the circuit courts of the United States; but as by sec. 915 of the Revised Statutes those courts are not authorized to issue attachments in common-law causes against the property of a defendant, except as "provided by the laws of the State in which such court is held for the courts thereof," it follows that, as by the amendatory act of 1873, now part of sec. 5242 of the Revised Statutes, all power of issuing attachments against national banks before judgment has been eliminated from State statutes, there cannot be any laws of the State providing for such a remedy on which the circuit courts may act. The law in this respect stands precisely as it would if there were no State law providing for such a remedy in any case. It was suggested in argument that the prohibition extended only to the use of the remedy by State courts, and that the remedy itself still remained to be resorted to in the courts of the United States. But we do not so understand the law. In our opinion the effect of the act of Congress is to deny the State remedy altogether so far as suits against national banks are concerned, and in this way it operates as well on the courts of the United States as on those of the States. Although the provision was evidently made to secure equality among the general creditors in the division of the proceeds of the property of an insolvent bank, its operation is by no means confined to cases of actual or contemplated insolvency. The remedy is taken away altogether and cannot be used under any circumstances.

It was further said that if the power of issuing attachments has been taken away from the State courts, so also is the power of issuing injunctions. That is true. While the law as it stood previous to the act of July 12, 1882 (c. 290, sec. 4, 22 Stat., 163), gave the proper State and Federal courts concurrent jurisdiction in all ordinary suits against national banks, it was careful to provide that the jurisdiction of the Federal courts should be exclusive when relief by attachment or injunction before judgment was sought. Until the act of 1882 the Federal courts had ample authority to grant injunctions in proper cases, and all a person need do to invoke that authority was to bring his suit in one of those courts. Whether since the act of 1882 this remains so is a question for the consideration of Congress. Some amendment to existing legislation may be necessary, but this does not shed any light on the interpretation of the old law. The difficulty arises from the change that has been made, not from the law as it stood originally.

We are, therefore, of opinion that the attachments in all the suits were illegal and void, because issued without any authority of law. But it is insisted that notwithstanding this the bonds are valid and may be enforced.

It is undoubtedly true that the sureties on a bond of this kind are estopped from setting up, as a defense to an action for a breach of its condition, any irregularities in the form of proceeding to obtain an attachment authorized by law which would warrant its discharge upon a proper application made therefor. As the purpose of the bond is to dissolve an attachment its due execution implies a waiver both by the defendant and his sureties of all mere irregularities. So, too, it is no defense that the property attached did not belong to the defendant, or that it was exempt, or that the defendant has become bankrupt or is dead. In all such cases, where there was lawful authority for the attachment, the simple question is whether the condition of the bond has been broken; that is to say, whether there has been a judgment in the action against the defendant for the payment of money which he has neglected for thirty days afterwards to make.

In the present case, however, the question is whether the bond creates a liability when the attachment on which it is predicated was actually prohibited by law. In other words, whether an illegal and therefore a void attachment is sufficient to lay the foundation for a valid bond to secure its formal dissolution. The bond is a substitute for the attachment, although not af-

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fected by all the contingencies which might have discharged the attachment itself. Carpenter v. Turrell, 100 Mass., 450, 452; Tapley v. Goodsell, 122 Mass., 176, 182. Such being the case, it necessarily follows that if there was no authority in law for the attachment there could be none for taking the bond. If the attachment itself is illegal and therefore void, so also must be the bond which takes its place. Objections can be made to an attachment issued on proper legal authority, which cannot be used as a defense to a bond taken under the statute for its dissolution; but if there can be no lawful attachment there can be no valid bond for its dissolution. The case is to be considered as though there was no law whatever for the seizure of property by attachment before judgment in any case. As the taking of the property under such circumstances would be unlawful, so also would be the act of the magistrate in accepting the bond.

Neither is the bond binding as a common-law bond. If the attachment had been valid, and the bond taken had not been in all respects such as the statute had required, it could nevertheless have been enforced as a common-law bond, because it was executed for a good consideration and the object for which it was given had been accomplished. But here the difficulty is that there was no lawful attachment, and therefore no lawful authority for taking any bond whatever. The bond is consequently neither good under the statute nor at common law, because there is no sufficient foundation to support it.

Objection is made to the relief which is sought in equity, because if the attachment bonds are void there is an adequate remedy at law in the suits that may be brought for their enforcement. If the suit in equity had been brought by the sureties to get rid of their obligation this objection might be good; but such is not its character. The sureties have in their hands assets of the bank which the receiver seeks to reduce to his possession, and which they claim the right to hold until they have been fully indemnified against or discharged from liability on the bonds. The receiver says there is no liability, because the bonds are invalid; and to have that question settled once for all he has brought the persons interested, creditors as well as sureties, before the court in order that it may be conclusively adjudicated between them. Such a suit is clearly cognizable in equity. The sureties are in a sense stakeholders. They do not claim the securities unless they are liable on the bonds, and the suit, although not brought by them, is in the nature of an interpleader to save them "from the vexation of two proceedings on a matter which may be settled in a single suit." The decree will bind all alike, and if the sureties are held not to be liable it will conclude the creditors from all further proceedings against them on the bonds and leave them free to surrender the securities to the receiver. This will not affect the judgments that the creditors have recovered any further than to limit their operation, so far as the receiver and the sureties on the attachment bonds are concerned, to the adjudication of the debts as claims entitled to dividends from the proceeds of the assets of the bank. To that extent, certainly, the court had jurisdiction in each of the suits after the insolvency; but as the attachments were void the judgments are inoperative as a basis of recovery upon the bonds.

The judgment in each of the suits at law is affirmed, but the decree in the suit in equity is reversed and the cause remanded with instructions to enter a decree setting aside and annulling the bonds which were given to dissolve the attachments, and enjoining each and all of the creditors, and those claiming under them, from proceeding in any manner to enforce the same against the sureties, and directing the sureties to surrender to the receiver the securities they hold for their indemnity.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

SAMUEL D. LINN
v.
JOHN N. HOOVER and CHARLES HOOVER, as J. N. HOOVER & BRO.

No. 25,579. AT LAW.

Decided March 12, 1888.

Where a suit is brought against two defendants upon a joint note the plaintiff must prove his case as to both defendants, and cannot even enter a *nolle prosequi* as to one on failure to prove the note against him.

To make a payment amount to or imply a new promise it must appear that the defendant made the payment and that it was made on account of the debt in controversy.

Motion for a new trial on exceptions.

The case is stated in the opinion.

SAMUEL E. LINN and J. J. JOHNSON for plaintiffs.

BIRNEY & BIRNEY for defendants.

Mr. Justice COX delivered the opinion of the court.

In this case the plaintiff sues the defendants for that the defendants, by their promissory note, now overdue, bearing date on the 25th day of February, A. D. 1879, jointly and severally promised to pay to the order of the plaintiff $523.68.

It appears, from the evidence, that John N. Hoover and Charles Hoover were brothers, and, at one time, were in partnership. The debt for which this note was given was contracted by the firm. The defendants say that the partnership was dissolved as far back as 1876. This note is dated in 1879. The debt, besides, is barred by limitations, unless it has been revived by a new promise.

The claim on the part of plaintiff is, in the first place, that no notice of dissolution was ever given, and, therefore, *quoad* the plaintiff, the partnership continued, and that Charles Hoover, one of the partners, made a payment upon the note as late as September 17, 1881, which, of course, implied a new promise, and therefore revived it.

The instruction given by the court below was

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that the jury should find for the defendants, because the note was made after the dissolution of the partnership by one of the partners only, and could not bind his codefendant, and because the evidence offered was insufficient to overcome the plea of the Statute of Limitations filed by the defendants.

The defendant, John Hoover, pleads *non assumpsit* and the Statute of Limitations. He denies that he ever executed the note at all. The defendant, Charles Hoover, simply pleads the Statute of Limitations.

It is quite remarkable that the note was never offered in evidence at the trial. No copy of the note is produced. It does not appear that it was signed by John Hoover at all. It does not even appear that it was signed in the partnership name. All that we have in the bill of exceptions is, that the son of the plaintiff testifies that he drew up the promissory note in his handwriting and Charles Hoover signed it. He does not say it was signed in the firm name.

Charles Hoover testified that the note in question was made by him, but does not state how he signed it—whether in the firm name or his own name. The case is absolutely without any proof that John Hoover ever was a party to this note; and upon that ground alone the judge was perfectly justified in directing a verdict for the defendants.

Where the suit is on an alleged joint note the plaintiff must prove his case as to both defendants, and cannot even enter a *nolle prosequi* as to one on failure to prove the note against him.

But apart from that, and assuming, as it seems to have been assumed by the plaintiff's counsel, all through, that it was a firm note, the next question would be, whether there was any promise, after the period of limitations had expired, or any act of revival by one of the parties. All we have upon that point is, that a collection clerk, named Simpson, who was employed by the plaintiff, entered in his private book the following language on the 17th of September, 1881: "Sept. 17. C. Hoover, $2." The witness was not produced, as he ought to have been, to prove the nature of this entry; but the entry was made in his private book in the course of business, and the plaintiff copied it into his own regular book.

Of course, to make a payment amount to or imply a new promise, it must appear that the *defendant* made the payment and that it was made on account of the debt in controversy. It does not appear that "C. Hoover" was the defendant in this case, Charles E. Hoover. Who "C. Hoover" was, does not appear. It does not appear that the two-dollar payment was made on account of the note in suit. There is, therefore, a lack of evidence to connect the payment with the note in controversy. The ruling of the court below, we think, was correct, and the judgment below is affirmed.

MARTIN v. CAMPBELL.

EQUITY No. 10,133.

Decided March 5, 1888.
The CHIEF JUSTICE and Justices COX and JAMES sitting.

Where a lien is claimed upon the property of a person who made no contract with the plaintiff the claimant will be held strictly to the terms of the statute, and must clearly establish his lien.

Where the claim is for materials furnished the original contractor it must appear that the lien was filed within three months of the finishing of the work under that contract and not of the finishing of other work done subsequently and not under the contract.

Bill in equity to enforce a mechanic's lien.

The case is sufficiently stated in the opinion.

HINE & THOMAS for plaintiff.

J. J. JOHNSON and D. O'C. CALLAGHAN for defendant.

Per Curiam.

This is a suit to enforce a mechanic's lien. The plaintiffs are material men.

Two questions were discussed in the case—one as to the credits that would be allowed where payments were made by the contractor to the material men, and the other as to whether the lien was filed within three months after the building was finished.

As to the credit we have no doubt that the claim should be allowed.

But the other question is one requiring much exactness. Where a lien is claimed upon the property of a person who made no contract with the plaintiff it must appear that the lien was filed within the time provided by the statute. Such a claimant will be held strictly to the terms of the statute and must clearly establish his lien. The other day, in a contest between a trustee and a material man, we refused to give priority to the lien because it did not appear that the work had been begun before the lien of the trust had attached to the property; so where the question is, as here, whether the house had been finished before the three months allowed by the statute for the filing of the lien had expired and the testimony is left uncertain upon that point, the court will refuse its aid.

In this case the plaintiff has not satisfied us that the lien was filed within three months of the finishing of the house. There seems, although that is not without doubt also, to have been some work done upon the building within the three months, but that work does not appear to have been done under the builder's contract, and it is the contract which the statute evidently looks to. If the owner chooses, after the contract is performed and the work is finished as was contracted for, to have some other work done upon the house, that is a disconnected matter and does not belong to the finishing of the building or repairs in the sense of the statute. It is true it was contended that their work came within the terms of the contract, but the proof is by no means clear as to that; consequently we cannot declare a lien to have been established. The statute was undoubtedly made for a beneficial purpose, but in this class of claims its effect is to place a burden upon a man that he does not contract for, and the plaintiff must consequently clearly establish his right.

The bill is therefore dismissed.

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SUPREME COURT OF MISSOURI.

STATE, *ex rel.* AMANDA CHRISTY, Adm'x, Respondent,
v.
JOHN J. DONEGAN, Appellant.

Decided February 6, 1888.

While an administrator cannot, to the detriment of creditors, distributees, or legatees, discharge a debt due the estate by a cancellation of his individual liability to such debtor of the estate, such debtor is entitled to a credit, by way of equitable set-off, where thereby justice can be done, as between the administrator and defendant, without affecting the rights of other parties and affecting alone the rights of the administrator as a distributee. Where the evidence of such an equitable set-off was received without objection the implied admission that the pleadings were broad enough to allow its reception will sustain the action of the court in its admission.

Appeal from a judgment of the St. Louis Circuit Court, Lubke, J., against the defendant in a suit by an administratrix of an estate.

The facts are stated in the opinion.

JAMES TAUSSIG and E. P. LINDLEY for appellant:

The defendant ought to have been allowed an equitable set-off against the interest of the relatrix in the judgment to the extent of the $1,242.98 which the relatrix owed to Ryan, the surviving partner, and for which the relatrix gave her receipt to him. Barnes v. McMullins, 78 Mo., 271, and cases cited; 1 Pom. Eq. Jurisp., p. 160, sec. 175; Paris v. Haley, 61 Mo., 462.

Interest is chargeable against a surety only from the time of demand made on him. United States v. Hills, 4 Cliff., 618; United States v. Curtis, 100 U. S., 119; Crawford v. Willing, 4 U. S., 4 Dall., 286; United States v. Poulson, 30 Fed. Rep., 231.

WILLIAM B. THOMPSON for respondent:

The question in this case is settled by the language of the court of appeals, as follows: "She sues in a representative capacity, and, though it is admitted that she has an interest in the estate, it was not shown the estate is solvent. Ryan knew that in delivering the groceries to Mrs. Christy he was not making payments to Christy's administratrix as required by law."

The language of this court in 83 Mo., 374, is: "And in support of the position taken, sustaining the circuit court in refusing to allow credit for the receipt which Mrs. Christy, the administratrix, had executed to Ryan for groceries delivered to her on her private account," &c., and the court adds the following authority: State v. Leslie, 83 Mo., 60.

The court, by citing that case, applies the rigid rule that the administratrix of this estate has no authority to mingle her own affairs with the affairs of the trust which she represents, and if that receipt given by her was of no force or effect in Ryan's hands it seems to be a strange vitality attached to it now that a surety on Ryan's bond should be entitled to any greater consideration than Ryan himself, after thirteen years of litigation. State v. Berning, 74 Mo., 87.

Interest shall be allowed on all money due upon any judgment or order of any court from the day of rendering the same until satisfaction be made by payment, accord, or sale of property; all such judgments and orders for money upon contracts bearing more than 6 per cent. interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear 6 per cent. per annum until satisfaction be made as aforesaid. Rev. Stat., sec. 2725.

The above statute has been in force ever since the Revised Code of 1845. See Riney v. Hill, 14 Mo., 501; Cruce v. Cruce, 81 Mo., 689, 691.

An appellate court will not review questions previously determined. Gaines v. Fender, 82 Mo., 497; Adair County v. Ownby, 75 Mo., 282; Lackland v. Smith, *Id.*, 307; State v. O'Gorman, *Id.*, 377; Conroy v. Vulcan Iron Works, *Id.*, 651.

The supreme court, in the second appeal in the case, will follow its previous decision, unless the pleadings developed on the retrial require a different decision as applicable thereto. Musser v. Brink, 80 Mo., 350; Metropolitan Bank v. Taylor, 62 Mo., 338.

This appeal is without merit, and the judgment should be affirmed, with 10 per cent. damages. Landauer v. Lichtenheim, 11 Mo., 385.

When the record presents no question not determined upon a former appeal of the case the judgment will be affirmed, with 10 per cent. damages. American Ins. Co. v. Kuhlman, 9 Mo., 587; State v. Weinel, 13 Mo. App., 583; Smith v. White, 17 Mo. App., 443.

Cordell v. First Nat. Bank, 64 Mo., 600, is an exactly parallel case to the case at bar, except that the question, instead of being decided twenty-one years ago, was decided thirty-six years ago.

JAMES TAUSSIG, for appellant, in reply:

There is no warrant for the assertion of respondent that "the record now before the court is the same as that examined by the court and reported in its opinion in 83 Mo., 374."

The fact that the defendant, Donegan, does not in his answer claim and ask in express terms the equitable set-off for the $1,242.98 demanded at the trial and in the fourth instruction refused does not deprive him of the equitable relief in that respect if, upon the evidence, he is entitled to it.

It is true that the defendant does not in his answer pray for equitable relief. But it is familiar law that "where there is a defense the court may grant any relief consistent with the case made and embraced within the issue." Northcraft v. Martin, 28 Mo., 471; Easley v. Prewitt, 37 Mo., 363, and numerous later cases.

Rev. Stat., sec. 2725, and the decision of this court in Riney v. Hill, 14 Mo., 501, do not seem to us to throw any light upon the entirely distinct question—whether interest upon the judgment debt should be calculated with rests for credits or under the Vermont rule.

If this were a simple account of a surviving partner or trustee the latter rule would be applied under the rulings of this court. Riney v. Hill, *supra;* Cruce v. Cruce, 81 Mo., 691.

The question in this case is whether, after judgment rendered against the surviving part-

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ner, a harsher rule of rests, resulting in part in compounded interest, shall be applied. This question we have respectfully submitted as one worthy of consideration, in view of the fact that the application of the other rule results in largely compounding interest against this defendant.

NORTON, Ch. J., delivered the opinion of the court.

This cause has once before been before this court, and is reported in 83 Mo., 374, when an opinion was rendered affirming the judgment of the court of appeals (12 Mo. App., 190) reversing the judgment of the circuit court and remanding the cause for retrial. On the second trial plaintiff obtained judgment for the sum of $15,178.29, from which the defendant has appealed.

The record now before us, while it varies somewhat from the record when the cause was here before, shows that the trial was proceeded with, generally, in conformity with the theory indicated in the opinion of the court of appeals.

It is, however, insisted that in one important particular there is a material difference. It is this: On the former trial the following receipt was read in evidence:

"ST. LOUIS, MO., *March* 7, 1876.

"Received of Thomas Ryan the sum of $1,242.98, same to be applied on any judgment which may ultimately be obtained against said Ryan by the State of Missouri, to the use of Christy. Said sum being received by me as administratrix of the estate of James Christy, deceased.

"AMANDA E. CHRISTY,
"Administratrix of the estate of
"James Christy, deceased."

On said trial it was shown that this receipt was given in payment of the private debt of Mrs. Christy, contracted for groceries; and it was also shown that she was entitled to one-fifth interest in the Christy estate.

On this state of evidence the trial court refused to allow defendant a credit or set-off for the amount of the receipt, and, in passing on the propriety of this action of the court, it is said, in the opinion heretofore alluded to, that "the circuit court properly refused to credit the defendant with the receipt which the administratrix had executed to Ryan for groceries delivered by him to her on her private account. She sues in a representative capacity, and, though it is admitted she has an interest in the estate, it was not shown that the estate was solvent. Ryan knew that in delivering groceries to Mrs. Christy he was not making payments to Christy's administratrix according to law."

The record in the second trial—the one now before us—shows, on this subject, not only all that the record of the first trial shows, but it shows, in addition thereto, that it was admitted by plaintiff "that the estate of James Christy was solvent; that all the debts of the estate had been paid; and that the share of Amanda Christy in said estate amounts to more than $2,500." While it is clear that an administrator cannot, to the detriment of creditors, distributees, or legatees discharge a debt due the estate by a cancellation of his individual liability to such debtor of the estate, it does not therefore necessarily follow that, under the facts above presented, defendant is not entitled, according to right and justice, to the credit claimed by way of equitable set-off, inasmuch as, by its allowance, justice would be done as between the administratrix and defendant without affecting the right of any creditor, distributee, legatee, or devisee, except that of Mrs. Christy, and that only to the extent of what she by her receipt virtually agreed might be done.

The only effect of allowing the credit, so far as the estate is concerned, would be to diminish her distributive share, as heir or devisee, by the amount of the credit allowed. This defense might have been more specially pleaded as an equitable set-off; but the evidence in regard to it having been received without objection, and being thus before the court with the implied admission that the pleadings were broad enough to allow its reception, we cannot see any sufficient reason why such judgment should not be passed or given upon the facts as the right of the matter required. 1 Pom. Eq. Jurisp., p. 160, sec. 175; Barnes v. McMullins, 78 Mo., 271. By the allowance of this credit as an equitable set-off, and subjecting Mrs. Christy's interest as legatee, distributee, or devisee of the estate to administration, to the extent of the credit allowed, no wrong is done either to the estate or Mrs. Christy, inasmuch as she would thereby only be required to do what in effect she agreed to do by her receipt. In other respects than the one noted the cause was tried on the theory indicated in the opinion when the cause was here before. That interest was properly chargeable on the judgment is settled by Rev. Stat., sec. 2975, and that the interest was properly computed is settled by the rule stated in Riney v. Hill, 14 Mo. 501.

Judgment reversed and cause remanded.

All concur except Sherwood, J., absent.—*Western Reporter.*

THE COURTS.

Supreme Court of the District of Columbia.

GENERAL TERM.

March 19.

Bainberger v. B. and P. R. R. Motion for bill of particulars denied.

Goldsborough v. Ray. Demurrer sustained and cause remanded.

Coridon v. Gray. Appeal dismissed.

Franey's administrators v. B. and P. R. R. Decision of Orphans' Court affirmed.

Beher v. Ottenburg. Argued.

March 20.

Noyes v. McMichael. New trial granted.

Berret v. Middleton. Argued.

IN EQUITY.—New Suits.

March 14.

11059. Nora O'Leary et al. v. Margaret O'Leary et al. Partition. Com. sol., N. T. Murray.

March 15.

11060. Wm. H. Thomas v. Virginia Thomas. Divorce. Com. sol., R. S. Smith.

11061. Wm. E. Stuart v. Benj. S. Donaldson et al. Judgment creditor's bill. Com. sol., L. C. Williamson.

11062. Horace F. Page v. John F. Dezendorf et al. Judgment creditor's bill. Com. sol., A. J. Willard.

March 16.

11063. Thomas I. Gardner et al. v. Chas. R. L. Findlay et al. To sell lots. Com. sol., I. G. Kimball.

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March 19.

11068. Walter W. Queen et al. v. Samuel E. Middleton et al. To annul certain conveyances and to sell. Com. sols., Mackey and Bond.

March 20.

11069. Martin F. Morris et al. v. Lou E. Taulbee et al. Specific performance. Com. sol., Geo. E. Hamilton.

March 21.

11070. Ransom H. Gillett, by next friend, Abbie W. Gillett, v. Reginald Fendall et al. Trustee to give bond. Com. sol., A. B. Duvall.

11071. Columbia Brick Co. v. The Dist. of Columbia et al. For injunction. Com. sol., Caldron Carlisle.

CIRCUIT COURT.—New Suits at Law.

March 12.

28503. Wm. H. Hoeke v. Annie L. McLean. Acc't, $369.46. Piffs attys, H. O. & R. Claughton.

28504. John M. Carter, trustee, v. Wm. E. Sebree et al. Notes, $550. Piffs atty, Wm. M. Lewin.

28505. Sallie Brian, trading as Brian & Co., v. John P. Hamlin. Acc't, $286.50. Piffs atty, F. T. Browning.

28506. The Wash. Gas-Light Co. v. John S. Hollinshead et al. Bond, $870.91. Piffs atty, H. R. Webb.

28507. Carl Straus et al. v. Charles Meyer. Note, $150. Piffs atty, J. J. Darlington.

28508. Jesse C. Ergood, et al. v. James F. De Atley. Acc't, $170.89. Piffs atty, J. J. Wilmarth.

28509. Anastasia Patten v. Robt. I. Fleming. Acc't, $30,000. Piffs attys, John M. Glover and J. H. Graham.

March 13.

28510. Benj. S. Janney et al. v. Wm. I. Tune et al. Acc't, $289.86. Piffs attys, Garnett & Mackall.

28511. Salt Springs Nat. Bank v. Wm. S. Sammons. Note, $400. Piffs atty, C. Brown.

28512. John C. McCabe et al. v. Francis W. Muhlhofer. Note and acc't, $134.70. Piffs attys. Abert & Warner.

28513. Chas. A. Childs v. Austin P. Brown. Notes, $934.40. Piffs atty, Same.

28514. Hattie D. Lacey v. Matthew McCully. Replevin. Piffs atty, D. E. Cahill.

28515. Clarence Beall v. Geo. C. R. Lowry. Acc't, $140.19. Piffs attys, Edwards & Barnard.

March 14.

28516. Lucy A. Lassiter et al. v. The Inland and Seaboard Coasting Co. Damages, $4,000. Piffs attys, Birney & Birney.

28517. Emil G. Schafer v. Camile Solari et al. Note, $100. Piffs atty, John Ridout.

PROBATE COURT.—Justice Cox.

March 16.

Guardianship of Susie and Hattie Richardson. Chas. F. E. Richardson appointed; bond, $2,000.

Estate William W. Hudders. Nathan Hudders appointed administrator; bond, $500.

Estate Geo. W. Morse. Letters testamentary to Marianne Morse; bond, $1,000.

Estate Charles Raisch. Letters of administration to Franzisca Raisch; bond, $1,000.

Estate Wm. W. Hampton. Letters to Sarah T. Hampton; bond, $1,600.

Estate James McGrann. Decree of sale of personal property to Henry F. and Mary McGrann.

Estate Annie K. Freudenberg. Letters testamentary to Katherine K. Abbott; bond, $100.

Estate Polly Y. Brownell. Letters of administration c. t. a. to Temperance P. Reed; bond, $3,000.

Estate Lydia Button. Letters testamentary to Zachariah S. Buckler; bond, $1,500.

Estate Benjamin L. Simpson. Will admitted to probate.

Estate Chester Goodrich. Inventory of personal estate.

March 23.

Guardian of Wilfred E. Bond. Petition of Chas. W. O'Neill for letters as guardian.

Estate of Sarah Curry. Will admitted to probate and letters testamentary issued to Wm. L. Dunlop; bond, $6,000.

Estate of Wm. King. Will admitted to probate; letters testamentary issued to Charles Lawson; bond, $75.

Estate of Mitchell Middleton. Letters testamentary issued to George W. Ray; bond, $2,400.

Estate of Elsey Curtis. Will admitted to probate.

Estate of Caroline M. B. Frailey. Letters of administration issued to Leonard B. Frailey; bond, $2,000.

Estate of Carl Mueller. Will admitted to probate; letters testamentary issued to Christina Mueller; bond, $4,000.

Estate of Susan Kengla. Letters testamentary issued to Mary J. Kengla; bond, $5,000.

Estate of Richard M. Bremmer. Account of sales of personal estate.

Estate of James Vermillion. Report of Reginald Fendall, administrator.

Estate of David R. Yulee. Executor directed to retain $10,000 in bonds.

Estate of Amelia M. Green. Order of publication.

Law Books.

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Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Caroline M. B. Frailey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1888.

13 L. A. FRAILEY, Adm'r, 1332 New York ave. n. w.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William King**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1888.

his
13 CHARLES ⋈ LAWSON, Ex'r, 1311 27th st. n. w.
mark

No. 2999. Ad. D. 13. C. M. & H. S. Matthews, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Charles Stott et al.
v.
The Widow and Heirs-at-Law of Colon Omohundro, deceased. } No. 10,396. Equity Doc. 26.

This cause being referred to me to report the distribution of the fund in the registry of the court, notice is hereby given that I will proceed to execute this order of reference on Monday, the 2d day of April, 1888, at 12 o'clock m., at my office, in the United States Court-House, Washington, D. C., at which time and place all creditors of the said Colon Omohundro, deceased, may appear and prove their claims.

13 JAS. G. PAYNE, Auditor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Jessie E. Weaver
v.
Jessie F. Campbell. } No. 11,043. Equity Docket 26.

H. Bradley Davidson and John L. Weaver, Trustees in the above-entitled cause, having reported the offer of Mr. Jacob Loeb to purchase the property referred to herein as the most northerly 23 feet 8 inches front by the depth of lot 10 and the most southerly 6 feet 9 inches front by the depth of lot 11, both in square 449, in the city of Washington, in the District of Columbia, for $12,300—$6,300 cash, balance in one, two, three, and four years, secured by deed of trust on said described property—it is, by the Court, this 24th day of March, A. D. 1888, ordered that said offer be accepted and the sale ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of April, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 13th day of April, 1888.

W. S. COX, Justice.

A true copy. Test:

R. J. MEIGS, Clerk.

13 (Seal.) By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Rosina Mackey
v.
Thomas J. Mackey. } No. 10,993. Docket 27.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendant, Thomas J. Mackey, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest defendant's title, as trustee for complainant, to part lot 12, square No. 761, in the city of Washington, D. C.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Rosina Mackey
v.
Thomas J. Mackey. } No. 10,992. Docket 27.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendant, Thomas J Mackey, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Catherine Hutchinson et al.
v.
William E. Hughes et al. } No. 10,979. Docket 27.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Mary Catherine Hughes, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell for partition lot 15, square 696, in the city of Washington, D. C.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 23d, 1888.

In the case of Reginald Fendall, administrator of James Vermillion, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 20th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

13 Test: DORSEY CLAGETT, Register of Wills.
No. 785. Ad. D. 9.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 23d, 1888.

In the matter of the Estate of Amelia M. Green, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William Burris.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
13 Test: DORSEY CLAGETT, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ann Tierney, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of March, 1888.

his
MATTHIAS ⋈ NOONAN,
mark
JAMES H. NOONAN,
13 Ex'rs, 1253 22d st. n. w.
No 3020. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 27th, 1888.

In the case of Mary A. Burns, Administratrix of William L. Ross, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

13 Test: DORSEY CLAGETT, Register of Wills.
No. 2586. Ad. D. 13. C. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 27th, 1888.

In the case of Chas. H. Cragin, Administrator d. b. n. of Mary M. Duffy, deceased, the Administrator d. b. n. aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator d. b. n. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

13 Test: DORSEY CLAGETT, Register of Wills.
No. 58. Ad. D. 8

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Leon Salomon, late of Washington, D. C., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of March, 1888.

13 THERESIE SALOMON, 1316 8th st. n. w.
Simon Wolf, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Carl Mueller, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1888.

13 CHRISTINA MUELLER, Ex'x, 221 B st. n. w.
D. E. Cahill, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas Duke**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1888.

13 SALLIE D. DUKE, Ex'x, 1455 Corcoran st.

No. 2985. Ad. D. 13. J. Thomas Sothoron, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal Estate of **Mary Jane Van Riswick**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1888.

MARY VAN RISWICK,

13 TALLMADGE A. LAMBERT,

Administrators, 1219 Mass. ave.

No. 3009. Ad. D. 14. T. A. Lambert, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Myron E. N. Howell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.

LIBBIE ALBERTA HOWELL,

13 Administratrix.

No. 2997. Ad. D. 13. Cole & Cole, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles Palmer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1888.

13 JOHN D. BARTLETT, Adm'r, 923 R. I. ave.

No. 3011. Ad. D. 14. T. A. Lambert, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Eckstein**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of March, 1888.

13 ANNA LOUISA ECKSTEIN, Adm'x, 109 B st. s. w.

No. 3005. Ad. D. 14. A. H. Jackson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Wilmer W. Hudders**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1888.

13 N. HUDDERS, Adm'r, 1824 16th st. n. w.

E. A. Newman, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William W. Corcoran**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of February, 1888.

13 ANTHONY HYDE, } Executors.
CHARLES M. MATTHEWS, }

No. 3001. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **James McGrann**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1888.

13 HENRY T. McGRANN, Adm'r, c. t. a.

1704 Pa. ave. n. w.

Wm. J. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Lucy E. Friend
v. } No. 11,005. Equity Docket 28.
Hervey Friend.

On motion of the plaintiff, by Mr. W. M. Offley, her solicitor, it is ordered that the defendant, **Hervey Friend**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce upon the ground of desertion.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

13 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lydia S. Button**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1888.

13 Z. S. BUCKLER, Ex'r, 802 A st. s. e.

No. 2949. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **George W. Morse**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1888.

13 MARIANNE MORSE, Ex'x, 1905 F st. n w.

No. 3016. Ad. D. 14. Alex. Porter Morse, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard H. Trunnell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of March, 1888.

13 WILLIAM H. TENNEY, Adm'r, 3142 P st. n. w.

No. 3002. Ad. D. 14. R. P. Jackson, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of March, 1888.

Mary L. Bowers
v. } No. 10,943. Docket 27.
David N. Bowers.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, David N. Bowers, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the grounds of non-support and willful and uninterrupted desertion for over three years from the filing of this petition.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
12 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Allie W. Pickerill
v. } No. 11,023. Docket 28.
Frank B. Pickerill.

The 19th day of March, 1888.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, Frank B. Pickerill, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce from bond of marriage on ground of desertion.

By the Court. W. S. COX, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
12 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Nathan B. Clarke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.
12 HARRIET E. CLARKE, Ex'x, 301 M st. n. w.
No. 3000. Ad. D. 13. F. L. Freeman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 16th, 1888.

In the case of Samuel C. Palmer, Executor of Sarah C. De Hart, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

12 Test: DORSEY CLAGETT, Register of Wills.
No. 2410. Ad. D. 12. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 16th, 1888.

In the case of Mary Jane Gass, Executrix of William Rea Gass, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

12 Test: DORSEY CLAGETT, Register of Wills.
No. 2642. Ad. D. 12.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Richard Byron, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of February, 1888.
13 ELIZA BYRON, Ex'x, 419 B st. s. e.
No. 2916. Ad. D.13. Sam'l C. Mills, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Polly Y. Brownell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 16th day of March, 1888.
13 TEMPERANCE P. REED, Adm'x, c. t. a.
No. 2993. Ad. D. 13. F. D. McKenney, Proctor.

CHANCERY SALE OF VALUABLE IMPROVED REAL ESTATE ON THE NORTHWEST CORNER OF PENNSYLVANIA AVENUE AND FOUR-AND-A-HALF STREET NORTHWEST, KNOWN AS NOS. 451, 453, 455 AND 457 PA. AVE.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on the 29th day of October, 1886 (as amended by order passed on the 15th day of March, 1888), in Equity Cause, No. 9937, wherein Edward F. Beale and others are complainants, and Gertrude Wheeler and others are defendants, I shall sell, to the highest bidder, in front of the premises, on MONDAY, the 2ND DAY of APRIL, 1888, at FOUR O'CLOCK P. M., the following described parcels of land in the city of Washington, District of Columbia, known as lots 28 and 29 of James H. Saville, trustee's, subdivision of part of original lot 1 in square 491, as the same is recorded in Book 15, page 151, of the records of the Surveyor of the District of Columbia.

Also all the right, title, and interest of the parties to this suit in and to the parcel of land, described as follows: Beginning at a point on the west side of Four-and-a-half street, distant 10½.33 feet north of the north line of Pennsylvania avenue, and running thence west, in a line perpendicular to Four-and-a-half street, 40.55 feet; thence northeasterly, in a line perpendicular to the course of Pennsylvania avenue, 19.29 feet; thence southeasterly 36.35 feet to a point on the west line of Four-and-a-half street, distant 9 feet north of the place of beginning; thence south, along the west line of Four-and-a-half street, 9 feet to the place of beginning

Said sub lot 28 is situated on the northwest corner of Pennsylvania avenue and Four-and-a-half street, having a frontage of 55 feet and 8 inches on Pennsylvania avenue, by a depth of 105 feet and 4 inches on Four-and-a-half street. It is improved by a three-story brick building.

Said sub lot 29 adjoins the preceding lot on the west, having a frontage of 18 feet on Pennsylvania avenue, by an average depth of 87.22 feet, and is improved by a two-story brick building.

The three parcels will first be put up for sale as a whole, and, if not sold, then each parcel will at once be offered separately.

Terms of sale, as prescribed by the decree as amended, are as follows: One-third of the purchase-money in cash and the balance in two equal installments, payable in one and two years, respectively, from the day of sale, or all cash, at the option of the purchaser. The deferred payments shall be secured by a deed of trust upon the premises sold and bear interest from the day of sale at the rate of six per cent. per annum, payable semi-annually. A deposit of $500 is to be made when the property is sold, if it be sold as a whole. If sold in parcels a deposit of $500 will be required on lot 28 and $250 on lot 29, and $100 on the remaining parcel of ground. If the terms of sale be not complied with in ten days from day of sale the Trustee reserves the right to resell at the risk and cost of the defaulting purchaser after five days' previous advertisement. All conveyancing at the cost of the purchaser or purchasers.

JAMES H. SAVILLE, Trustee,
12 1419 F Street N. W.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 7th day of March, 1888.

Emmons S. Smith
v.
George C. Lewis. } At Law, No. 28,435. Docket 32.

On motion of the plaintiff, by Mr. Chapin Brown, his attorney, it is ordered that the defendant, George C. Lewis, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

(The object of this suit is to collect the claim of the said plaintiff against the said defendant for $156.00, for the rent of house No. 1026 8th street (N. W.), Washington, D. C., from June 1st, 1887, to August 16th, 1887, at $62.50 per month; and for $2.75 advanced by the said plaintiff for the said defendant and for his use.)

Provided that a copy of this notice be published in the Evening Star once a week for each of three successive weeks before the said rule-day.

A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk, &c.
11 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Hillery Jordan
v.
John H. King, Adm'r, et al. } In Equity. No. 10,624.

W. Preston Williamson, trustee in this cause, having reported a sale of the real estate and premises described in these proceedings to Mrs. Cornelia Plumley, for the sum of $290.00, it is, this 9th day of March, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 9th day of April, A. D. 1888.

Provided that a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 9th day of April, A. D. 1888.

And it is further ordered that this cause be, and it hereby is, referred to the Auditor to state the trustee's account.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
11 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Michael T. Keliher, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.
11 MARY E. KELIHER, Adm'x, cor. 34th & P sts.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Obediah Kimmell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of February, 1888.
11 JOSEPH GAWLER Ex'r, 1731 Pa. ave. n. w.
No. 2942. Ad. D. 13. N. H. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The sixth day of March, 1888.

Charles W. Arndt
v.
Matilda Arndt. } No. 10,915. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, his solicitor, it is ordered that the defendant, Matilda Arndt, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce, upon the grounds of non-support and willful desertion for over two years from the filing of this cause.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 7th day of March, 1888.

Clara A. Engelhardt
v.
Frank Engelhardt. } No. 11,019. Docket 28.

On motion of the plaintiff, by Mr. Leon Tobriner, her solicitor, it is ordered that the defendant, Frank Engelhardt, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain an absolute divorce on the ground of desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
11 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
March 9th, 1888.

In the matter of the Estate of Ann Jones, late of Washington City, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Samuel C. Palmer.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of March next, at 11 o'clock a. m., to show cause why the said Will and four Codicils thereto annexed should not be proved and admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
11 Test: DORSEY CLAGETT, Register of Wills.
H. O. & R. Claughton, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
March 9, 1888.

In the case of Sallie Shea, Administratrix of Philip Shea, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 30th day of March, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

11 Test: DORSEY CLAGETT, Register of Wills.
No. 947. Ad. D. 9. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
March 9, 1888.

In the matter of the Estate of Catharine E. Beall, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, to be granted to Robert S. Werden, of said District, has this day been made by Joseph N. Plowman and Marion L. Wilson.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of March, 1888, next, at 1 o'clock p. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star newspapers previous to the said day.

By the Court. W. S. COX, Justice.
11 Test: DORSEY CLAGETT, Register of Wills.
Edwards & Barnard, Proctors.

THIS IS TO GIVE NOTICE,

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Anthony H. Janus, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of February, 1888.
11 FRANKLAND JANNUS, Ex'r, 288 F st. n. w., City.

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Alabama Revised Code, 1867.
Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

Hannon's Digest, vols. 1 and 2.
Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
Lovelass on Wills.

Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
Powell on Devises.
Preston on Abstracts of Title, 2 vols. in one.

Railway Law (Bonner), 1878.
Ray's Medical Jurisprudence of Insanity, 1853.
Roberts on Wills, vols. 1, 2.
Roper on Wills.

Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
Smith's Probate Law, 1868.
Smith's Elements of the Law.
Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
Willis on Trusts.
Williams on Executors, &c., vol. 2, Thobault's Notes.

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The Washington Law Reporter.
ESTABLISHED 1874.
WM. STONE ABERT, - - - - - Editor
VOL. XVI. - - - - - - - No. 14
WASHINGTON, D. C. - - - - - APRIL 4, 1888

H. R. 8190.

A bill (H. R. 8190) "to define and regulate the jurisdiction of the courts of the United States" has been, by the Committee on the Judiciary, reported to the House of Representatives and has been somewhat debated. Section 8 of this proposed act, printed elsewhere in this issue, is directed to the judiciary system of the District of Columbia, and will have the effect, if passed in its present shape, to deprive litigants in this District of their right of appeal to the Supreme Court of the United States, a right which has been accorded to our people ever since the organization of our courts. The proposed law prohibits the prosecution of an appeal or writ of error to the Supreme Court of the United States from the Supreme Court of the District of Columbia in any case, either at law or in equity, with only a saving in favor of the United States or where Federal questions are involved, no matter what may be the magnitude of the interests involved, and will most surely, if enacted, result in great hardship and be a practical denial of justice to a helpless people—helpless because they must depend upon the will and whim of Congressional legislation and have no voice in the selection of their judges or in the regulation of their judicial system.

The Supreme Court of the District, as now constituted, is a shifting and interchangeable court, the appeal branch of the court being selected (three members usually sitting) from the six judges composing it, and in this way each judge, in turn, has an opportunity and is required to review the rulings and decisions of his brother justice sitting in the special terms, the practical result being that the decision on an appeal from the special term will very much depend upon the preconceived ideas of the law entertained by the justices who *happen* to be sitting when the appeal is argued, and this in a community holding over two hundred thousand people and who own real and personal property to the value of over one hundred millions of dollars. Clearly, it seems to us that the right of appeal now enjoyed ought not to be abridged as suggested in this bill, for so to do would, beyond a doubt, work the gravest injustice to a community whose interests, from their dependent condition, should enlist the most considerate treatment from our immediate legislators, many of whom have themselves substantial interests and rights of property in this city.

It has been suggested that the leading idea in the proposed legislation was to put the law system of this District on a par with the system in the States and that this enactment will accomplish that result. It will not. While want of space prevents a full discussion of the matter, a reference may be made to our neighbor, the State of Maryland, from which the great body of our law is derived. That State is furnished with numerous courts, from that of magistrate up to a stable and independent court of appeals, and an appeal lies to this court of last resort from all courts except that of the magistrate. The city of Baltimore alone is provided with six courts, and has its own court of appeals, from which an appeal will lie to the Court of Appeals of the State. Mark the contrast. Here it is proposed practically to leave the rights of property-owners and litigants to the judicial determination of, as a matter of fact, *one court*, for the special terms held are branches of the Supreme Court of the District of Columbia, the justices composing which are interchangeable between the special terms, at one time sitting in the special terms and again in the general term reviewing the decisions of their brethren delivered in special term.

By way of illustration, suppose an action of ejectment should be brought in this District which involved the title to property of great value, Willard's Hotel or the Corcoran Gallery of Art, for instance. The determination of the Supreme Court of the District of Columbia, should this bill become a law, would be conclusive and final.

Many examples might be given and many causes referred to in which the decisions of the Supreme Court of this District have been reversed and the law settled on lines totally opposed to the principle announced by our General Term. But sufficient has been said, we think, to show that the change would be a most undesirable one and greatly to the disadvantage of our people.

At a late meeting of the Bar Association it was declared to be the unanimous sentiment of the bar, and we believe it to be the sentiment of the business community, whose interests are so seriously involved, that, so far as this District is affected, this bill should not become a law, or, at least, that this section should be eliminated from it or so amended as to avoid the obnoxious quality it now has.

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YEARS ago the late Chief Justice practiced law before Judge L. B. Otis, now of Chicago. Judge Otis was interviewed by a reporter of the Chicago *Tribune*, and we copy from that paper the substance of his comments, which are in full accord with the excellent estimate of the deceased jurist by "A. G. R." in our last issue:

"I knew Chief Justice Waite intimately. He practiced before me many years ago. I was judge of the Toledo court from 1851 to 1857. Mr. Waite came from Connecticut to the Maumee Valley in 1837 and settled in Maumee, which was then the county seat of Lucas county. When the county seat was moved from Maumee to Toledo Mr. Waite likewise moved his residence. My residence during the period of my judgeship was in Fremont, which is well known as the home of ex-President Hayes. Mr. Waite had a partner, and the firm was known as Young & Waite. It was the leading law firm of the valley all the way from Fort Wayne to Toledo. Mr. Young retired from the firm about the time the war broke out. Mr. Waite continued in the business, which continually increased, until he was called to the Supreme Court of the United States. A year ago last December he came from Washington to Toledo expressly to attend a dinner party given in honor of the eightieth anniversary of his former partner, for whom he entertained the kindest and most cordial feelings. Five weeks ago I was in Washington and visited Judge Waite, both at his house and in his chambers at the Capitol. We chatted freely over old times. He was active, smart, and bright, and gave no indication that death would so quickly claim him.

"He was a leading lawyer of an unblemished character. He was a finely educated man, and had a physique intended for the greatest amount of endurance. He prepared his law papers with the most wonderful rapidity and accuracy. Sheet after sheet would fly from his pen, and not one needed a correction.

"His father was an old-fashioned Whig, and he followed in the old gentleman's wake. I never heard of his making a political speech. In 1849 he was elected a member of the Legislature and served one term. He was a member of the Ohio Constitutional Convention and its chairman when he was appointed Chief Justice.

"He was a good, strong, substantial speaker, but no orator. He could scarcely be called a jury lawyer, yet few lawyers could marshal the facts so succinctly as he. In this he was so successful that if his case had any merits of its own he almost always won.

"He never appeared in criminal cases, never had anything to do with a slander suit or a case of assault and battery. His business was with banks, railroads, corporations, and large property interests. His partner took but little interest in any of the cases after they got into court. Mr. Waite then did all the work. He was a natural-born book-keeper and could go through a set of books with the rapidity of the confidential clerk under whose charge they had been. His integrity was of that lofty character that he was constantly referred to in and out of court.

"He had been offered every judicial position that Ohio could offer, but he always declined for the reason that his practice was worth much more than the salary attaching to the position. From 1845 to, say, 1860 his practice was worth about $7,000 a year, which in those days was considered something extraordinary.

"About a year after his appointment to the Supreme Bench I called upon him in the consultation-room in Washington. He said a position on the Supreme Bench was the only judgeship that ever tempted him. In the course of conversation he said that he hated to leave Toledo. He loved the Maumee Valley and its people, and some day he hoped to return and spend the remainder of his days. Judge Waite was a sterling man. He did not know what deceit or double-dealing was. He hated shams of every description. He was a sincere man, and in his frank, open face there was nothing but the most exact truth. He was an eminently just man."

Myer's Federal Decisions, Vol. 20.

The above volume of this admirable series is mainly devoted to the arrangement of Federal decisions relating to Indians, interest and usury, insanity, and judgments and executions. We have from time to time commented upon the volumes of this work as they were issued, generally in terms of unqualified approbation. The present volume, in all that makes a book of reference valuable to the practitioner, is in keeping with those that have preceded it. The work throughout is evidently prepared with much care and judgment, and, although we have not had the opportunity to make an exhaustive critical examination, yet we have browsed over it enough to convince us that it will become a valuable and permanent addition to the libraries of American lawyers.

SUPREME COURT OF THE UNITED STATES.

HOWARD D. POTTS, Appellant,

v.

THE UNITED STATES.

Decided March 19, 1888.

When the finding of a naval retiring board, under sections 1449–1454 R. S. U. S., that the incapacity of an officer disabled for active service did not originate in the line of duty, has been approved by the President it is final and fixes the *status* of the retired officer. The subsequent transfer of such officer, under section 1594, from the furlough to the retired pay list, does not alter his *status* so as to entitle him to three-quarters of the sea-pay provided for retired officers whose incapacity originated in the line of duty, but only increases his pay from half furlough to half sea pay of the grade or rank he held at the time of retirement.

Appeal from the Court of Claims.

Mr. Chief Justice WAITE delivered the opinion of the court.

Howard D. Potts, an assistant engineer of the Navy, being physically disabled, was examined by a naval retiring board, who reported that he was incapacitated from active service, and that in their judgment the incapacity did not origi-

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nate in the line of duty. In this report the President concurred and directed a retirement on furlough-pay.

The sections of the Revised Statutes governing such a proceeding are as follows:

"Sec. 1449. Said board shall be authorized to inquire into and determine the facts touching the nature and occasion of the disability of any such officer, and shall have such powers of a court-martial and of a court of inquiry as may be necessary.

"Sec. 1450. The members of said board shall be sworn in each case to discharge their duties honestly and impartially.

"Sec. 1451. When said retiring board finds an officer incapacitated from active service, it shall also find and report the cause which, in its judgment, produced his incapacity, and whether such cause is an incident of the service.

"Sec. 1452. A record of the proceedings and decision of the board in each case shall be transmitted to the Secretary of the Navy, and shall be laid by him before the President for his approval or disapproval or orders in the case.

"Sec. 1453. When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of the service, such officer shall, if said decision is approved by the President, be retired from active service, with retired-pay, as allowed by chapter 8 of this title.

"Sec. 1454. When said board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of the service, such officer shall, if said decision is approved by the President, be retired from active service on furlough-pay, or wholly retired from service with one year's pay, as the President may determine.

"Sec. 1593. Officers placed on the retired-list on furlough-pay shall receive only one-half of the pay to which they would have been entitled if on leave of absence on the active-list."

On the 15th of March, 1877, Potts was nominated by the President and confirmed by the Senate on the 17th of the same month, for transfer from the furlough to the retired pay list under section 1594 of the Revised Statutes. That section is as follows:

"Sec. 1594. The President, by and with the advice and consent of the Senate, may transfer any officer on the retired-list from the furlough to the retired pay list."

Since his confirmation he has been paid one-half the sea-pay of an officer of his rank at the time of retirement, the accounting officers being of opinion that his case fell within the second clause of section 1588 of the Revised Statutes, which is as follows:

"The pay of all other officers on the retired-list (excluding those above specified) shall, when not on active duty, be equal to one-half the sea-pay provided by this chapter for the grade or rank held by them at the time of retirement."

He claims, however, that after his transfer from the furlough to the retired list he was entitled to three-quarters of the sea-pay under the first clause of that section, as follows:

"Sec. 1588. The pay of all officers of the Navy, who have been retired after 45 years' service after reaching the age of 16 years, or who have been or may be retired after 40 years' service, upon their own application to the President or on attaining the age of 62 years, or on account of incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure therein, shall, when not on active duty, be equal to 75 per cent. of the sea-pay provided by this chapter for the grade or rank which they held, respectively, at the time of their retirement."

This suit was brought to recover the difference between one-half and three-quarters of sea-pay from the date of his transfer. The Court of Claims gave judgment against him, and from that judgment this appeal was taken.

We agree entirely with the Court of Claims in the view it took of the case. The finding of the retiring board, approved by the President, is the judgment of the tribunal created under the law for the government of the Navy to determine such questions, that Potts be retired from active service for incapacity, which "did not originate in the line of duty." This made him a retired officer on furlough-pay, and gave him one-half the leave of absence pay of an officer on the active list. When he was afterwards transferred by the action of the President and Senate "from the furlough to the retired pay list" his *status* as a retired officer was not changed. He still remained an officer retired for incapacity which did not originate in the line of duty, but his pay was raised from that of an officer retired "on furlough-pay" to that of one retired on half sea-pay. In other words, he was taken from the furlough-list and put on the list of those retired under circumstances which brought them within the second clause of section 1588 instead of the first. The object of the statute is not to enable the President and Senate to vacate the finding of the retiring board that the incapacity of the officer did not "originate in the line of duty," and to decide that it was "the result of an incident of the service," but to afford a means for his relief from the consequences of such a finding, to the extent of adding to his pay the difference between the half of leave of absence pay and the half of sea-pay. It may have been intended as a provision for a remedy for wrongs done by retiring boards, but it limited the power of the President and Senate in that behalf to a transfer of the name of the officer from "the furlough to the retired pay list." The cause of his retirement still remains the same and determines his position on the "retired-pay list."

The judgment of the Court of Claims is affirmed.

THE UNITED STATES, Appellant,
v.
JABEZ BURCHARD.

JABEZ BURCHARD, Appellant,
v.
THE UNITED STATES.

Decided March 19, 1888.

1. An officer of the Navy, retired on furlough-pay list, and subsequently transferred from the furlough to the retired pay list, the transfer being antedated as of the date of original retirement, is in no event entitled to more than half the sea-pay of the grade or rank which he held at the time of retirement. (See Potts v. U. S., *ante*.)

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2. Money paid by the disbursing officers of the Government in excess of such half sea-pay to such a retired officer may be set off by the United States and recovered in an action against them brought by the retired officer.

Appeals from the Court of Claims.

Mr. Chief Justice WAITE delivered the opinion of the court.

Jabez Burchard, an assistant engineer in the Navy, was examined by a retiring board organized under section 1448 of the Revised Statutes, and the board reported that he was incapacitated from active service, and "that his incapacity was not the result of an incident of the service." The statutes regulating such a proceeding are given in full in Potts v. The United States (reported above). The President approved the findings, and Burchard was retired on furlough-pay October 26, 1874. On the 1st of March, 1877, the Secretary of the Navy addressed a letter to the Fourth Auditor of the Treasury, stating that "upon a full review of all the facts in the case . . . the Department is of opinion that the causes which incapacitated him [Burchard] for active duty were incident to the service, and that he should have the higher rates of pay allowed to retired officers by section 1588 of the Revised Statutes."

On the 1st of March, 1878, the President made the following nomination:

"*To the Senate of the United States:*

"In accordance with section 1594 of the Revised Statutes, I nominate Jabez Burchard assistant engineer, to be transferred from the furlough to the retired-pay list of the Navy from the 20th of October, 1874.

"R. B. HAYES."

On the 25th of March, 1878, the Senate advised and consented to the appointment, as follows:

"*Resolved*, That the Senate advise and consent to the appointment of Assistant Engineer Burchard to be transferred from the furlough to the retired pay list from the 26th of October, 1874, agreeably to the nomination."

On the 1st of April, 1878, Burchard was notified of this transfer.

From the 26th of October, 1874, until the 1st of April, 1878, he has been paid 75 per cent. of the sea-pay for the grade or rank which he held at the time of retirement, being $1,275 a year. Since April 1, 1878, he has been paid $850 a year, under the second clause of section 1588—his half sea-pay. He brought this suit on the 5th of September, 1883, to recover the difference between one-half and three-quarters of sea-pay from April 1, 1878. The United States set up by way of counter-claim that he had been overpaid $1,168.75 for his salary from April 1, 1875, to March 31, 1878, and asked judgment for that amount. The Court of Claims, on the 4th of February, 1884, dismissed both the petition and counter-claim. From that judgment both parties appealed. That of the United States was docketed in this court October 24, 1884, which was during the return term; but that of Burchard was not docketed until January 7, 1888, and he did nothing here in the mean time to make himself an actor in that behalf. For that reason his appeal is dismissed for want of due prosecution, on the authority of The S. S. Osborne, 105 U. S., 447. See also Hilton v. Dickinson, 108 U. S., 168; The Tornado, 109 U. S., 117.

We have, then, for consideration only the questions which arise on the appeal of the United States. The suit was brought to recover a balance claimed to be due for pay after March 31, 1878. The counter-claim is for moneys alleged to have been overpaid between October 26, 1874, and March 31, 1878. As the petition of Burchard was dismissed because he had already been paid in full for all he was entitled to after March 31, 1878, the appeal of the United States brings up only the questions presented by the counter-claim. These are, first, as to the amount which Burchard was actually entitled to for his pay between October 26, 1874, and April 1, 1878, after his transfer "from the furlough to the retired pay list," and, second, as to the right of the United States to recover back any amount he may have been paid over what he was actually entitled to by law.

As to the first of these questions it was settled in the case of Potts, *ante*, that he was in no event entitled to more than half sea-pay, and that all he got over that was by a mistake of the accounting officers. Whether he was entitled to more than half of leave of absence pay before April 1, 1878, depends on the effect of the action of the President, with the advice and consent of the Senate, in antedating the transfer so as to make it relate back to October 26, 1874, when the nomination to the Senate was not actually made until March 1, 1878.

What is now section 1594 of the Revised Statutes was originally enacted as part of section 3 of the act of January 16, 1857 (c. 12, 11 Stat., 134), "to amend an act of February 28, 1855 (c. 127, 10 Stat., 616), being 'An act to promote the efficiency of the Navy,'" and it was evidently intended to enable the President, with the advice and consent of the Senate, to relieve a deserving officer to a limited extent from the consequences of the findings of retiring boards. Under such circumstances it should, in our opinion, be liberally construed in favor of justice. This case may fairly be taken for illustration. The law requires a record of the proceedings and decision of the retiring board to be made and transmitted to the Secretary of the Navy and by him laid before the President for his approval or disapproval or orders in the case. At first the findings in this case were approved and orders made thereon, but afterwards the Department became satisfied on re-examination that the findings were wrong, and that the incapacity was actually the result of causes incident to the service. Neither the Department nor the President could then change the findings, as they had already been approved, and were no longer open to review.

The action of the President was equivalent to the judgment of an appropriate tribunal upon the facts as found. That judgment as a judgment could not be disturbed, but under this statement it was just within the power of the President, with the advice and consent of the Senate, to relieve the officer to some extent from its consequences by tranferring him from furlough to retired pay. There is no prohibition against antedating such a transfer. The statute simply says that the President, by and with the advice and consent of the Senate, may make

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it, and in our opinion he may, with like advice and consent, determine whether it shall operate only in the future or relate back to a time when in his judgment it ought to have been granted. It follows that Burchard, by this action of the President and Senate, became entitled to half sea-pay from October 26, 1874. He has thus been overpaid only to the extent of one-fourth of sea-pay from October 26, 1874, to March 31, 1878, or at the rate of $425 a year.

It only remains to consider whether the amount which has thus been paid, or as much thereof as is embraced in the counter-claim case, be recovered back in this action, and we are of the opinion that it can. The action was brought by Burchard to recover a balance claimed to be due on pay account from the date of his retirement. He had been paid according to his present claim until April 1, 1878, and consequently there was nothing to complain of back of that date. But in reality the account had never been closed and was always open to adjustment. Overpayments made at one time by mistake could be corrected and properly charged against credits coming in afterwards. His pay was fixed by law, and the disbursing officers of the Department had no authority to allow him any more. If they did it was in violation of the law, and he has no right to keep what he thus obtained. Whether the Government can in any case be precluded from reclaiming money which has been paid by its disbursing and accounting officers under a mistake of law is a question which it is not now necessary to decide any more than it was in M'Elrath v. United States, 102 U. S., 426, 441, when it was suggested. This is a case where the disbursing officers, supposing that a retired officer of the Navy was entitled to more than it turns out the law allowed, have overpaid him. Certainly under such circumstances the mistake may be corrected. It follows that the judgment against the United States upon the counter-claim must be reversed and the cause remanded for further proceedings not inconsistent with this opinion. It is consequently so ordered.

Supreme Court of the District of Columbia.
GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

GEORGE CANDY and WIFE
v.
CHARLES H. SMITH.

Decided March 12, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. The wife alone must sue upon a promise made to her in a matter having relation to her separate estate.
2. Parties cannot be joined as plaintiffs in a suit at law unless each is interested in the entire cause of action. Thus, where the wife is the owner of but part of the cause of action she cannot be joined with her husband in a suit for the whole.
3. But the wife may be joined with her husband in a suit where the wife is the meritorious cause of action, as where she has rendered personal services, or the husband may sue alone for such services.

On demurrer certified to the General Term to be heard in the first instance.

The case is stated in the opinion.

EDWARDS & BARNARD for plaintiff:

Dicey states, in his work on Parties (p. 200, Rule 31), that a husband may sue either alone or jointly with his wife in three cases, to wit, on negotiable paper made to the wife before marriage, on contracts made with the wife alone after marriage, and on contracts made with himself and his wife after marriage. If this contract could be separated it might be held that the same was made with the wife, partly in her own right and partly as agent of her husband; but as it cannot, in its very nature, be divided, it should be treated as a contract made with both husband and wife, and therefore they may be joined as plaintiffs.

If the account sued on was only for the rent of a room in a house belonging to Mrs. Candy, as her separate estate, the husband need not be joined as plaintiff. She would alone be entitled to the money when recovered. 24 Am. L. Reg., 354; Aldridge v. Muirhead, 101 U. S., 397; Stout v. Terry, 70 Ind., 501; Russel v. Long, 52 Iowa, 250.

As to the second point of the demurrer we submit that it is the duty of the defendant to provide his wife with the necessaries of life, and if he has not done so his wife can pledge his credit therefor, and nothing further need appear in the declaration than the facts that he has declined to furnish the same and that the plaintiffs have supplied them. Schouler on Husband and Wife, secs. 66, 101, 111, 117; Ross v. Ross, 69 Ill., 569.

A recovery could be had on the common counts, in the absence of a defense, and if circumstances exist to rebut the legal presumption of liability they must appear by a plea, and the point cannot be raised by demurrer. 1 Bishop on Marriage and Divorces, secs. 556, 568, 578; Walker v. Laighton, 31 N. H., 111.

L. CABELL WILLIAMSON for defendant.

Mr. Justice COX delivered the opinion of the court.

This case presents a legal puzzle. The plaintiffs sue the defendant and say that the plaintiffs are husband and wife and reside in the District of Columbia; that the plaintiff, Mary Candy, has a separate estate, which is invested in furniture and fixtures and the hiring of house No. 929 E street northwest, in Washington city, where the plaintiffs reside and where said Mary Candy carries on the business of renting rooms and keeping boarders; that, in the course of her said business, the said Mary Candy undertook to and did board and lodge Malvina W. Smith, then and now the lawful wife of the defendant, for about one year, to wit, from about July 12, 1882, to July 12, 1883, at and for the sum of thirty-five dollars per month; that during the said time the defendant failed and refused to provide for his said wife, and such board and lodging furnished her by said plaintiffs were necessary to her life and comfort, and were furnished her on the defendant's credit, and that by reason of the premises the defendant is justly indebted to the plaintiffs in the sum of $420, for which they bring suit.

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There are also the common counts.

To this declaration a general demurrer was filed.

The matters of law intended to be argued were—first, a misjoinder of the parties plaintiff; second, in a suit against the husband for necessaries furnished his wife the plaintiff must aver all the special facts which render the husband liable.

The plaintiff filed a joinder in demurrer, and, the issue coming on for hearing, the court, of its own motion, certified the case to be heard in the General Term in the first instance.

The argument for the defendant is this: Here is an alleged entire promise to pay $35 a month. The consideration for that promise consists of several elements. The first is the use of the furniture and room, which was the separate estate of the wife. The wife alone can sue upon a promise of that kind. The husband cannot be joined with her. Another element in the consideration is the work, labor, attendance, and personal service of the wife. The husband alone can sue for that. The husband cannot join in suing upon this promise, so far as it relates to the use and occupation of the wife's separate estate. The wife cannot join with the husband in suing upon it so far as it is a promise to pay the wife for personal services; and, inasmuch as the promise is an entire promise and cannot be apportioned, neither party can sue for any part of the consideration, and, therefore, neither husband nor wife, nor both jointly, can sue for the whole or any part of the amount claimed under this contract.

If that is so, it is a very hard case; but if the rules of law require it they cannot be strained in order to serve the purposes even of a meritorious claim. We first speak of the special count. With regard to the wife's separate estate, as we all know, the law is, that her right to any property, personal or real, which belonged to her at the time of marriage, or which was acquired after marriage in any other way than by gift or conveyance from her husband, is as absolute as if she were not married; and she may contract and sue and be sued in matters having relation to her separate estate as if she were unmarried.

In the case of an unmarried woman it is perfectly apparent that nobody could be joined with her in a suit for any consideration furnished by her upon an implied or express assumpsit, and *quoad* the separate estate of a married woman her husband is as much a stranger to her as anybody else. If he could join in a suit in a matter having relation to her separate property, he could control the suit, and in case of her death it would survive to him. Such a result would be entirely foreign to the spirit and intent of the married woman's act. So that there does seem to be an insuperable difficulty in the way of the husband joining with his wife in a suit upon a promise made to her in a matter having relation to her separate estate. It is contended, to be sure, on the part of the plaintiffs that the wife may join with the husband in suing upon a promise made to her during marriage where she is the meritorious cause of action, as she is alleged to be in this case; but that will not help the matter. No one can sue unless he can be a plaintiff as to the entire cause of action. If two parties have distinct interests in an entire cause of action, each one being entitled only to a portion of it, they can no more join in a suit than if they have separate promissory notes payable to them respectively.

On the part of the defendant it is further maintained that the wife cannot join with her husband in suing upon a promise made to her during marriage in consideration of her personal labor and services; and if that be true, it is equally fatal to the special count with the objection I have already considered. The husband cannot join the wife in suing upon a matter relating to her separate estate, and it is also contended that she cannot join with her husband in a suit for the fruits of her own labor.

We are not inclined to agree with the defendant, however, in this position. It was held a long time ago, in a case cited with approval in Chitty's Pleadings, as follows:

"In general, the wife cannot join in an action upon a contract made during the marriage, as for her work and labor, goods sold, or money lent by her during that time, for the husband is entitled to her earnings, and they shall not survive to her, but go to the personal representatives of the husband, and she could have no property in the money lent or the goods sold; but when the wife can be considered as the meritorious cause of action, as if a bond or other contract under seal, or a promissory note, be made to her separately or with her husband, or if she bestow her personal labor and skill in curing a wound, &c., she may join with her husband or he may sue alone." 1 Chitty Pl., 30.

This is qualified a little further on in the same book as follows:

"But care should be taken that the declaration does not embrace a cause of action which affords the husband only a right to sue. Therefore where husband and wife declared for a debt due for a cure effected by the wife during their marriage, and the declaration also contained a charge for medicines supplied, upon general demurrer it was objected that the wife could not join, for that she was not the sole cause of action, because the medicines were the husband's own property, and the damages could not be severed, and of that opinion was the court."

This difficulty is suggested in this case. If the suit should be brought for the board alone, that consists of food, which may be supplied by the husband instead of the wife, as well as of the personal services of the wife in preparing and serving it, &c., so that even that branch of the case is not without difficulty.

However, there are common counts in the declaration, and we are not prepared to say that under them the plaintiffs may not establish a case from which the law would imply a promise to pay the wife, on which the husband could sue—a case in which her special skill in housekeeping, &c., might be the meritorious cause of action, and in which she might be joined with her husband.

We therefore sustain the demurrer to the special count and overrule it as to the common counts and send the case back for further proceedings.

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SUPREME COURT OF PENNSYLVANIA.

HAYMAN v. THE PENNSYLVANIA RAILROAD COMPANY.

Decided January 16, 1888.

The principle that, in a suit against a common carrier, the fact of a passenger being injured is alone sufficient to make out a case against the defendant, applies only when the injury is caused by some defect in the machinery of transportation or in something peculiar to the defendant's business.

A person who, having purchased a ticket, attempts to pass through an ordinary door leading from the station and is injured by coming into collision there, cannot charge the railroad company without adducing affirmative evidence of negligence on its part. The simple facts that he was a passenger and was injured are not enough, under such circumstances, to send the case to the jury.

Error to the Court of Common Pleas No. 3, of Philadelphia county.

Opinion by Judge WILLIAMS.

The complaint of the plaintiff in error in this case is that the court below directed the entry of a compulsory nonsuit on the conclusion of his evidence.

The sole question for consideration, therefore, is whether the evidence was sufficient to sustain a verdict in favor of the plaintiff. The facts disclosed by it are that the plaintiff had purchased a ticket from the defendant company entitling him to carriage from Philadelphia to Burlington, N. J., and was proceeding from the ticket office to the boat on which a part of the journey was to be made. His route was through a long, narrow passage, intended to accommodate persons passing in single file. At the end near the landing was a door, the upper half of which was provided with glass, and which swung either way to permit the passage of persons to and from the boat. The person in front of plaintiff passed out at the door, leaving it to swing back behind him. The plaintiff put out his hand to arrest its motion and push it open again, and, instead of directing his hand towards the frame or wooden portions of the door, pushed it against the glass, which broke under the force of the impact and let his hand through, cutting it and inflicting the injury sued for. This was the whole case, and upon it the plaintiff contends that he should have been allowed to go to the jury, upon the ground that the mere happening of the injury raised, *prima facie*, a presumption of negligence and throws the burden of disproving negligence on the carrier. In support of this position he cites Laing v. Calder, 81 Barr, 474, and several cases following it.

The authority of those cases is beyond question, but the applicability of the rule established by them to this case is not. The rule requires that a carrier of passengers shall exercise "the utmost degree of care and diligence" to secure the safety of its passengers. To this end it must provide a safe road-bed, well-constructed cars, engines, and skillful, trustworthy servants to take charge of the movement and management of trains. All these things are under the exclusive control of the officers of the company. The public have no right and no opportunity to interfere in regard to them. When, therefore, a passenger is injured by a collision or other accident while on his journey the law presumes the accident to be due to want of proper care on the part of the company conducting the transportation and puts the burden of showing the actual condition of the track, the car, or other appliance involved in the accident upon the only party in a condition to bear it, viz., the carrier which has the exclusive possession and care of it. The legal presumption takes the place of the proof which the injured person is unable to make and puts the carrier at once upon the defense. Laing v. Calder, *supra;* Muir v. Railroad Co., 14 P. F. F. Smith, 226; Railroad Co. v. Anderson, 13 Norris, 358.

But the reason ceasing the rule ceases. If an intoxicated person, after having purchased his ticket at a railroad station, should, on his way out of the ticket office, stumble upon a heated stove and suffer serious injury there would be no reason for excusing the injured man from making out his case because he had a railroad ticket in his pocket or because the stove on which he fell belonged to a railroad company or was standing in a railroad station. It was no part of the machinery of transportation, and was in no sense peculiar to the business of the railroad company.

The same thing is true of the case in hand. The plaintiff was injured in the waiting-room or passage-way leading to the wharf by putting his hand through the glass in the swinging door. The door was no part of the machinery employed for the carriage of passengers. It was not built upon a pattern peculiar to the defendant company. So far as the pleadings or the plaintiff's evidence enable us to judge, it was constructed like the swinging doors to be met with in places of business in every part of the country. It was certainly visible to all comers and goers passing between the waiting-room and the boat, for it was so located that all passengers were obliged to push it open in passing to or from the landing. If there was anything in the construction of the door that made it unfit for the purpose for which it was used or the place at which it was located it was easy for the plaintiff to show it by a multitude of witnesses.

There was no reason, therefore, for resorting to the legal presumption of negligence in aid of the plaintiff's case. The cause of the accident and the location and construction of the door were as clearly known to the plaintiff as to the defendant and its employes; and it was the duty of the plaintiff to make out his cause of action in this case as he would be bound to do if the swinging door had been in a hotel or store. Not having done this, the court was clearly right in ordering the nonsuit.

SIMON TRUBY, JR., Plaintiff in Error,
v.
JAMES MOSGROVE ET AL., Administrators.

Where money was furnished by B. to R., R. to have the privilege of retaining the money until certain oil certificates deposited by R. with B. were "worth in open market $1.15 per barrel," and R. to pay 7 per cent. interest as long as he retained the money (which was above the legal rate), *held*, that the contract between B. and R., while resembling a contract for the loan of money, was not so in sub-

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stance, but practically a venture or speculation in oil, with capital to be furnished by B., the repayment to B. depending upon a contingency which might never occur, and not upon the happening of a certain event, and therefore that the transaction was not usurious.

Error to the Common Pleas of Armstrong County to review a judgment in favor of the defendants in an action of assumpsit.

Assumpsit by Simon Truby, Jr., assignee for the benefit of creditors of D. A. Ralston, against James Mosgrove and William Pollock, administrators of J. E. Brown, deceased.

At the trial the jury found the following special verdict:

"We find that D. A. Ralston borrowed from James E. Brown, at different times in 1880, money amounting to $60,000.

"That he secured this loan by the pledge of United Pipe Line certificates as collateral security, at the rate of 1,000 barrels of oil for each $1,000 borrowed.

"That said certificates were sold by the defendants about the 20th of November, 1882, who realized therefrom $870.31 in excess of the said debt and 6 per cent. interest thereon.

"That when said loan was made it was agreed in writing that Ralston should 'pay 7 per cent. as long as he retains the same, not to be less than four months, and Ralston to have the privilege to retain the money until United Pipe Line certificates are worth in the open market $1.15 per barrel.'

"If upon these facts the court be of opinion that the reservation of 7 per cent. interest is usurious, then we find for the plaintiff the sum of $1,074.45, being the amount of said excess, with interest thereon.

"If the court be of opinion that the reservation of said rate is not usurious upon the facts of this case, then we find for the defendants."

Subsequently the court entered judgment on the verdict in favor of the defendants.

The assignment of error specified the action of the court in entering judgment in favor of the defendants on the question reserved.

Mr. Justice PAXSON delivered the opinion of the court.

The learned judge of the court below entered judgment in favor of the defendant upon the special verdict. In this there was no error. The contract between Brown and Ralston, while resembling somewhat a contract for the loan of money, was not so in substance. It was practically a venture or speculation in oil, with capital to be furnished by Brown. If unsuccessful—that is, if oil never reached $1.15 per barrel—the loss fell on Brown; if successful, Brown was to get his money back with 7 per cent. interest. In other words, he risked the capital with the chance of selling 1 per cent. above legal interest as profit.

We do not see any taint of usury in this. It is settled law that when the promise to pay a sum above legal interest depends upon a contingency, and not upon the happening of a certain event, the loan is not usurious. This was decided in Philadelphia and Reading Railroad Company v. Stichler, 11 W. N. C., 325. And see also Spain v. Brent, 68 U. S., 1 Wall., 604; Corcoran's Case, 58 U. S., 17 How., 612.

In Philip v. Kirkpatrick, Add., 124, the principle is thus stated:

"If money be lent payable on a contingency which may never happen, as the arrival of a ship, more than legal interest may be reserved on the payment, and it is not usury, for the lender risks the loss of the whole."

Judgment affirmed.

CASES in which the rights of a railway company and the rights of the public come into conflict not unfrequently lead to a difference of opinion on the bench, and this rule has been well exemplified by the case of Bunch v. The Great Western Railway Co., 55 L. T. Rep. (N. S.), 9; 17 Q. B. Div., 215, in all its stages. The facts were simple. Mrs. Bunch arrived at Paddington at 4.20, intending to go to Bath by the 5 o'clock train. She had with her a portmanteau, a hamper, and a Gladstone bag, which were taken by a porter and placed on a trolley. Upon her arrival she told the porter that she wished the Gladstone bag to be put into the carriage with her, and asked if it would be safe with him. He assured her that it would and that he would guard the luggage and put it in the train. The train had not been drawn up to the platform. She then went to the end of the station to meet her husband, who had come from Moorgate street. Ten minutes later she returned with her husband, and it was found that the Gladstone bag had disappeared. Upon these facts Judge Stonor found that the time of intrusting the luggage to the porter was a reasonable and proper time before the departure of the train; that the luggage was intrusted to the porter for the purposes of the journey and not for the purposes of deposit; that the porter, in accepting the luggage, was not acting beyond the scope of his employment, and that consequently the company were liable for the loss. In the Divisional Court Mr. Justice Smith agreed with the County Court judge. Mr. Justice Day, on the other hand, differed from him, but the former, as the junior judge, withdrew his judgment, and the decision was reversed. In the Appeal Court the majority, consisting of the Master of the Rolls and Lord Justice Lindley, held that the judgment of the County Court ought to be restored, Lord Justice Lopes dissenting. The decision of the Appeal Court was affirmed last week by the House of Lords, though not unanimously. The Lord Chancellor, Lord Herschell, and Lord Macnaghten concurred in the view taken by the majority of the Court of Appeal. On the other hand, Lord Bramwell agreed with Lord Justice Lopes. Lord Bramwell put the case for the company as strongly as it could be put, but his extreme views on the general question of the liability of companies in cases of loss or accident detract somewhat from the weight of his judgment. He dismisses the authorities with the remark that they show a generous struggle on the one hand to make powerful companies liable to individuals and on the other hand an effort for law and justice. We gather from Lord Bramwell's judgment that the proper course would have been for Mrs. Bunch to have deposited her luggage in the cloak-room, but this would seem to be an intolerable burden to impose upon passengers who arrive a few minutes early for their

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train. Once it is proved that the time of arrival was a proper and reasonable time before the departure of the train, the fair inference is that the porter, when he accepted the luggage, accepted it for the purposes of the journey, and we fail to see how the liability of the company can be affected either by the existence of the cloak-room system or by the accident that the train was not drawn up to the platform.—*London Law Times.*

Section 8 of House Bill 8190.

That no writ of error from or appeal to the Supreme Court of the United States shall lie in any cause, at law or in equity, determined by the Supreme Court of the District of Columbia, except in cases where the United States, or some officer thereof, acting under its authority, is a party, or when the adjudication involves a question upon the construction of the Constitution or the construction or validity of a treaty or a law of the United States, in which description of cases the questions for determination shall be certified by the Supreme Court of the District of Columbia, in the manner provided in the last preceding section as to writs of error and appeals in similar cases adjudged in the circuit courts.

MASTER AND SERVANT—WHEN RELATION EXISTS—PROVINCE OF JURY.—The plaintiff was sent to the defendants' dock with a horse which had been hired by a person doing the trucking on the dock for the defendants. While there with the horse he was ordered to go to work by defendants' foreman, and was injured by the first truck he used. *Held*, that the question as to the existence of the relationship of master and servant between the parties was a mixed question of law and fact, to be solved with the aid of a jury.—Jan. 17, 1888. Brophy v. Bartlett. Opinion by Finch, J.

THE COURTS.

Supreme Court of the United States.

April 2.

Cyrus F. McNutt, of Terre Haute, Ind.; Joseph H. Blair, of New York city; Oscar R. Hendley, of Huntsville, Ala.; F. W. Lehmann, of Des Moines, Iowa; Wm. H. Gudgel, of Evansville, Ind.; J. C. Bates and George R. B. Hayes, of San Francisco, Cal., and Luther M. Dearborn, of Aurora, Ill., were admitted to practice.

150. The Washington Ice Co. et al. v. Webster. Judgment affirmed with costs and interest.

872. Spencer v. Merchant, executrix, &c. Judgment affirmed with costs.

64. The Union Trust Co. of New York v. Morrison. Decree affirmed with costs.

105. Williams v. Conger et al. Judgment affirmed with costs.

910. The State of Missouri, ex rel. Walker, v. Walker, State Auditor. Judgment affirmed with costs.

191. Hartranft, Collector, &c., v. Sheppard et al. Judgment affirmed with costs and interest.

909. Morgan's Louisiana and Texas R. and S. S. Co. v. The Texas Cent. R. Co. et al.

974. The Texas Cent. R. Co. v. Morgan's Louisiana and Texas R. and S. S. Co. et al. To advance denied.

166. Glacier Mountain Silver Min. Co. v. Willis et al. Judgment of dismissal of February 6, 1888.

Justice Miller announced an order allotting Justice Harlan to the fourth circuit in addition to his duties as circuit justice of the seventh circuit.

1366. The United States v. Bailee, administrator, &c. Submitted under twentieth rule.

1395. Ex parte: In the matter of Simon Coy et al. Motion to advance granted.

479. John F. Gilmer et al. v. Kemon. Motion to dismiss submitted.

1390. Julia A. Nutt, executrix, v. The United States. Submitted pursuant to twentieth rule.

374. Allis v. Freeman et al. Dismissed with costs.

1401. The Nashville, Chat. and St. L. R. v. the State of Alabama. Motion to advance submitted.

1405. Batchelor v. Kirkbride. Docketed and dismissed with costs.

919. Rea et al. v. The Steamboat Eclipse, &c. Motion to dismiss submitted.

1378. The District of Columbia, appellant, v. Murdock.

1379. Wm. C. Murdock, appellant, v. The District of Columbia. Submitted by Attorney-General Garland and Assistant Attorney-General Howard for the District of Columbia and by C. C. Cole and John C. Fay for Wm. C. Murdock.

1381. The United States v. Strong. Submitted.

1384. The United States, appellant, v. Irwin et al.

1385. The United States, appellant, v. Perry et al. Submitted.

1387. Page v. The United States. Submitted.

1388. The United States, appellant, v. The State of Louisiana. Submitted.

1394. The United States, appellant, v. Baker. Submitted.

195. Johnson v. Christian et al. Submitted.

197. The Arkansas Valley Smelting Co. v. The Belden Mining Co. Submitted.

198. The United States v. Colgate. Dismissed.

199. Hunt v. Blackburn et al. Submitted.

200. Morgan et al. v. Eggers. Argued.

201. Lyon v. The Pervin and Gaff Manf'g Co. Argued.

202. The Minneapolis and St. Louis R. Co. v. Herrick. Argument commenced.

Supreme Court of the District of Columbia.

GENERAL TERM.

April 2.

Berret v. Middleton. Opinion by Justice James remanding cause to be referred to auditor for account.

Capron v. Capron. Opinion by Justice Cox construing will.

Haywood v. Hurtford. Opinion by Justice Cox confirming partnership.

Beha v. Ottenberg. Opinion by Chief Justice remanding cause back with directions that issues be made up for decision before a jury.

Brown v. Brown. Opinion by Chief Justice affirming decree below dismissing bill.

Wright v. Dearing. Opinion by Justice James. Motion to strike out order dismissing motion for a new trial overruled.

Cook v. Trotter. Argued and submitted.

IN EQUITY.—New Suits.

March 16.

11064. Julius I. Atchinson v. Nellie A. O'Keefe. To enforce mechanic's lien. Com. sol., Jno. Ridout.

11065. Ida Forrist et al. v. Abraham Kendrick et al. Partition. Com. sol., B. F. Leighton.

March 17.

11066. Julia A. Beach et al v. Mary A. Beach et al. Partition.

March 19.

11067. Warner Guy v. Lucy Burgess et al. Judgment creditor's bill. Com. sol., T. H. Fitnam.

March 22.

11072. Elizabeth B. Smith v. Albert Smith. For divorce. Com. sol., J. J. Weed.

11073. Catherine Wilson v. Catherine Miller et al. E. A. Newman.

11074. Columbus F. Shekells v. Charles Knowles. To sell lots. Com. sols., C. M. & H. S. Matthews.

11075. James O'Leary and wife v. Chas. M. O'Leary et al. To sell lot. Com. sols., Brown and Miller.

March 23.

11076. Joseph A. Blundon et al. v. Mayhew Plater et al. For an account, receiver, and injunction. Com. sol., F. W. Jones.

11077. Joseph C. Wood v. Ida Wood. For divorce. Com. sol., Thos. C. Taylor.

11078. Cornelia H. Smith v. Alice Qualls et al. For an account and sale. Com. so.., E. A. Newman.

11079. Wm. H. H. Gorham v. Henry H. Dudley et al. To substitute trustee. Com. sol., J. J. Darlington.

March 24.

11080. David F. McGowan et al. v. Nancy Vovery et al. To construe part of will. Com. sol., John Ridout.

11081. Job W. Angus v. Second White Oak Baptist Church et al. For an account and sale to satisfy mechanic's lien. Com. sol., A. L. Merriman.

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11082. Harvey L. Maddox et al. v. Albert James et al. For an account and injunction. Com. sol., John Critcher, jr.

March 27.

11083. Cornelius W. Beall v. Eliza C. Hutchinson et al. For conveyance. Com. sols., Morris & Hamilton.

11084. Margaret Walker et al. v. Lillie M. Walker et al. To sell sub-lot and to make partition. Com. sol., W. W. Boarman.

March 29.

11085. Wm. H. Tenney v. Anson S. Taylor et al. To sell part lot. Com. sol., R. P. Jackson.

11086. Wm. F. Mattingly et al. v. John F. Olmstead et al. Partition. Com. sol., J. G. Kimball.

March 30.

11087. Patrick O'Dea et al. v. Mary O'D. Brown et al. Partition. Com. sol., T. M. Fields.

11088. Robt. Wilson v. Arthur W. Carroll et al. To sell lots. Com. sol., C. Robinson, jr.

11089. John W. Schultz v. Louisa Gockeler et al. To appoint a trustee. Com. sol., L. Tobriner.

11090. Alice V. Weeden v. Chas. E. Beall et al. To construe will. Com. sols., Morris & Hamilton.

March 31.

11091. Katherine Dennis v. Abert Janus, jr., et al. To enforce judgment and for injunction. Com. sol., W. H. Dennis.

11092. Samuel F. Emmons v. H. W. Garnett et al. Injunction, discovery, and account.

CIRCUIT COURT.—New Suits at Law.

March 14.

28518. Wm. Wallace Welsh v. Joseph E. Willson et al. Note, $300.

28519. Chas. A. Bearans et al. v. Henry F. Dodd. Note, $317.91.

28520. Same v. Susan Irwin. Note, $94.37.

28521. Wm. W. Rapley v. George A. Shehan. Acc't, $1,950. Piffs attys, Totten and Newman.

28522. S. C. Mills v. Dist. of Columbia. Acc't, $410. Piffs atty, J. J. Darlington.

28523. Luke Devlin v. Wm. L. Mulliken. $204.43. Piffs atty, Chas. A. Elliott.

28524. Hugh Bowman v. Stilson Hutchins. Damages, $5,000. Piffs atty, E. M. Hewlett.

28525. Albert S. Hartman et al. v. George T. Lamborne et al. Judgment of Justice Strider, $27.20.

28526. Eugene Levering et al. v. Theodor F. Browning. Acc't, $448.70. Piffs attys, Birney & Birney.

March 15.

28527. The Union Paper Box Co. v. Wm. S. Sammons. Acc't, $149.41. Piffs attys, Curriden and Williamson.

28528. R. Philip Gormuelly et al. v. Wm. C. Scribner. Note, $202.21. Piffs atty, F. W. Jones.

28529. John H. Barlow et al. v. Alexander B. Burns et al. Acc't, 126.29. Piffs atty, Same.

28530. Annie M. Allen v. Sons of Temperance Nat. Mutual Relief Society. Policy, $2,000. Piffs attys, Worthington & Heald.

March 16.

28531. Michael Talty v. James D. O'Donnell. Account rent, $400. Piffs attys, Morris & Hamilton.

March 17.

28532. Benj. F. Eakle v. Wm. T. Maddox. Account, $187.05. Piffs atty, C. G. Berryman.

28533. Same v. Harvey L. Maddox. Account, $237.60. Piffs atty, Same.

28534. Edw. L. Palmer et al. v. Luther M. Cornwall. Judgment of Justice Wilson, $99.68. Piffs atty, R. W. McPherson.

March 19.

28535. Wm. D. Hughes v. Thomas Raedy. Judgment of Justice Mills, $85.

March 21.

28536. Wm. B. Jackson et al. v. Wm. B. T. Davis. Notes, $526.96. Piffs attys, Morris & Hamilton.

March 22.

28537. Wm. King v. Thomas Pursell. Judgment of Justice Strider, $28.63.

28538. The U. S., on the relation of John F. Cook, Collector of Taxes of the District of Columbia, v. James M. Trotter, Recorder of Deeds of the District of Columbia. Mandamus. Piffs atty, H. E. Davis.

March 23.

28539. Geo. W. Cissell et al. v. Geo. A. O'Hare. Note, $505.75. Piffs atty, S. A. Cox.

28540. Same v. Henry Miller. Account, $339. Piffs atty, Same.

28541. Same v. Geo. W. Fowler et al. Account, $342.95. Piffs atty, Same.

28542. Wm. H. Robertson v. Thos. B. Stahl. Replevin. Piffs attys, Carusi & Miller.

28543. John H. Meirsers v. Fannie K. Gordon. Damages, $3,000. Piffs atty, L. Tobriner.

28544. Sarah M. Starr et al. v. Wm. W. Metcalf. Note, $75. Piffs attys, Maddox and Grier.

March 24.

28545. Samuel J. Creswell v. John Fraser. Note, $250. Piffs atty, F. T. Browning.

28546. Otis F. Presbrey v. Effie H. Ober. Account, $5,000. Piffs atty, B. F. Leighton.

28547. The United States et al. v. Mary Ann Bacon et al. Bond, $2,000. Piffs attys, Davidge and Boarman.

March 26.

28548. Isaac J. Seligman et al. v. Nathan L. Rosenberg. Bill of exchange, $15,510. Piffs attys, Edwards & Barnard.

28549. Wm. H. Slater v. Wm. B. T. Davis. Notes, $635.

28549. Wm. H. Slater v. Wm. B. T. Davis. Notes, $635.

28550. John M. Moberley v. Julius H. Pardee. Notes, $323.47. Piffs atty, R. D. Mussey.

March 27.

28551. Robt. Wilson v. Arthur W. Carroll. Judgment of Justice Wilson, $100. Piffs atty, C. Robinson, jr.

March 29.

28552. Galsworthy Beresford v. Margaret Flynn. Certiorari. Piffs atty, E. C. Weaver.

28553. Carrie A. Booth v. Edward J. Duff. Account, $165. Piffs atty, J. J. Wilmarth.

28554. Wm. L. Naylor v. Milton A. Boswell. Account, $250. Piffs attys, Rowe and Miller.

28555. R. O. Edmonston v. Same. Note and account, $252.22. Piffs attys, Same.

28556. H. W. Garnett v. Saml. F. Emmons. Issue from Probate.

28557. The Central National Bank of Washington City v. Wm. F. Williams et al. Judgment of Justice Wilson, $83.09. Piffs attys, Edwards & Barnard.

28558. Samuel H. Stidham v. Wm. T. Cox et al. Note, $500. Piffs attys, Garnett and Mackall.

28559. Wm. L. Lyon et al. v. Edw. Caverley, lately trading as Edward Caverley & Co. Account, $1,062.75. Piffs attys, Birney & Birney.

March 30.

28560. Julia Graf et al. v. Julius Wagner. Note, $200. Piffs atty, L. C. Williamson.

28561. Wm. Walsh v. M. H. Gregory. Damages, $10,000. Piffs atty, W. A. Cook.

28562. Eva Willis v. Louise Patterson. Damages, $10,000. Piffs atty, Same.

March 31.

28563. Henry D. Bolitor v. Samuel C. Hill et al. Note, $200. Piffs atty, C. Brown.

PROBATE COURT.—Justice Cox.

March 30.

Estates Michael Corcoran and John Miller. Will filed.

Estate Nathan B. Clarke. Inventory filed.

Estate Ann Jones. Motion for postponement of hearing.

Estate Edwardo Albuto del Camino. Two papers in Spanish filed with translations.

Petition of Aaron H. Freer for guardianship on John M. Halleck, dentist in Navy, filed.

April 3.

Estate W. W. Corcoran. Claim of John L. Olmstead filed.

Estate Catharine E. Beall. Robert S. Merden appointed administrator; bond, $4,000.

Estate David K. Carter. Order authorizing administratrix to assign certain securities.

Estate Dora Stearman. Letters of administration to Louis Stearman; bond, $500.

Estate Matilda E. Madison. Claim filed by Cole & Cole.

Estate Ann Jones. Letters testamentary to Samuel C. Palmer; bond, $150.

Estate Michael Corcoran. Letters testamentary to Mary A. Corcoran; bond, $4,000.

Estate Susan Pinn. Will admitted to probate and record.

Notice of Election.

BY RESOLUTION OF THE BOARD OF TRUSTEES notice is hereby given that a SPECIAL MEETING OF THE STOCKHOLDERS OF THE LAW REPORTER COMPANY, of Washington city, will be held at the office of said Company, No. 503 E STREET NORTHWEST, in said city, on SATURDAY, APRIL 7, 1888, for the election of trustees of said Company. Polls will be open from 12 M. until 1 o'clock P. M. of said day.

WM. F. MATTINGLY, President.

FRANKLIN H. MACKEY, Secretary.

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Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Maria E. Rodier**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1888.

14 SARAH E. A. GIBSON,
Adm'x c. t. a., 2143 K st. n. w.

No. 3003. Ad. D. 14. A. S. Taylor, Proctor.

IN THE SUPREME COURT OF THE D'STRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 31st, 1888.

In the case of Mary Ann and Samuel H. Bacon, Executors of **Samuel Bacon**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 20th day of April, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

14 Test: DORSEY CLAGETT, Register of Wills.

No. 2674. Ad. D. 13

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles Karsch**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1888.

14 FRANZISCA KARSCH, Ad'm, 1400 Pa. ave. n. w.

No. 3017. Ad. D. 14. Simon Wolf, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 31st, 1888.

In the case of Christopher C. McKenney, Administrator of **Jarrad McKenney**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 27th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

14 Test: DORSEY CLAGETT, Register of Wills.

No. 2634. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of March, 1888.

Gertrude E. Samo
v.
Brooke B. Williams. } No. 11,028. Docket 26.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendants, Douglass Scott and Harriet de Bodisco Scott, his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud caused by defective acknowledgment of deed in Liber J. A. S. 199, folio 40, of the land records for the District of Columbia, from title of all of lot 113, Beatty and Hawkins' addition to Georgetown, D. C., and part of lot 106 in same addition. Beginning at northeast corner of said lot 106 and running thence south 48 feet 6 inches; thence west 66 feet and 8½ inches; thence north to southwest corner of lot 113 and thence east to the beginning with general right of way over a 15-foot alley, leading from lot 106 to First street.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

14 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Catharine E. Beall**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of April, 1888.

14 ROBERT S. WERDEN, Adm'r, 622 I st. n. w.

No. 3014. Ad. D. 14. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 3, 1888.

In the matter of the Estate of **John L. Miller**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by George M. Jones.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of April, instant, at 1 o'clock p. m., to show cause why the said Will should not be admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

14 Test: DORSEY CLAGETT, Register of Wills.

No. 3034. Ad. D. 14. Chas. E. Fraser, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In re Michael Sheahan,
Lunatic. } Equity. No. 10,870.

Mary Sheahan, the trustee appointed in the above-entitled cause, having reported to the Court that she has sold the property described in these proceedings, to wit, the north fourteen (14) feet of lot eight (8) by the depth of said lot, in square five hundred and twenty-nine (529), at private sale, to Julius Patch, for $2,650, it is, by the Court, this 2d day of April, A. D. 1888, ordered, adjudged, and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of May, A. D. 1888.

W. S. COX, Justice, &c.

True Copy. Test: R. J. MEIGS, Clerk,

14 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of **Sarah Curry**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of March, 1888.

14 WILLIAM L. DUNLOP, Ex'r, 3014 N st. n. w.

No. 3024. Ad. D. 14.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Rosina Mackey v. Thomas J. Mackey. } No. 10,998. Docket 27.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendant, Thomas J. Mackey, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest defendant's title, as trustee for complainant, to part lot 12, square No. 761, in the city of Washington, D. C.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Rosina Mackey v. Thomas J. Mackey. } No. 10,992. Docket 27.

On motion of the plaintiff, by Mr. J. J. Darlington, her solicitor, it is ordered that the defendant, Thomas J Mackey, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Catherine Hutchinson et al. v. William E. Hughes et al. } No. 10,979. Docket 27.

On motion of the plaintiffs, by Mr. J. J. Darlington, their solicitor, it is ordered that the defendant, Mary Catherine Hughes, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell for partition lot 15, square 696, in the city of Washington, D. C.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 23d, 1888.

In the case of Reginald Fendall, administrator of James Vermillion, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 20th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

13 Test: DORSEY CLAGETT, Register of Wills.
No. 785. Ad. D. 9.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 23d, 1888.

In the matter of the Estate of Amelia M. Green, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by William Burris.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of April next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
13 Test: DORSEY CLAGETT, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William W. Corcoran, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 29th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 29th day of February, 1888.

13 ANTHONY HYDE, CHARLES M. MATTHEWS, } Executors.
No. 3001. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 22d day of March, 1888.

Lucy E. Friend v. Hervey Friend. } No. 11,005. Equity Docket 28.

On motion of the plaintiff, by Mr. W. M. Offley, her solicitor, it is ordered that the defendant, Hervey Friend, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce upon the ground of desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
13 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William King, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1888.

his
13 CHARLES ⋈ LAWSON, Ex'r, 1311 27th st. n. w.
mark
No. 2999. Ad. D. 13. C. M. & H. S. Matthews, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Caroline M. B. Frailey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of March, 1888.

13 L. A. FRAILEY, Adm'r, 1332 New York ave. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Jessie E. Weaver v. Jessie F. Campbell. } No. 11,043. Equity Docket 28.

H. Bradley Davidson and John L. Weaver, Trustees in the above-entitled cause, having reported the offer of Mr. Jacob Loeb to purchase the property referred to herein as the most northerly 23 feet 8 inches front by the depth of lot 10 and the most southerly 6 feet 9 inches front by the depth of lot 11, both in square 449, in the city of Washington, in the District of Columbia, for $12,300—$6,300 cash, balance in one, two, three, and four years, secured by deed of trust on said described property—it is, by the Court, this 24th day of March, A. D. 1888, ordered that said offer be accepted and the sale ratified and confirmed, unless cause to the contrary thereof be shown on or before the 18th day of April, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 18th day of April, 1888.

W. S. COX, Justice

A true copy. Test:
13 (Seal.) R. J. MEIGS, Clerk.
By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas Duke**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1888.

13 SALLIE D. DUKE, Ex'x, 1455 Corcoran st.

No. 2985. Ad. D. 13. J. Thomas Sothoron, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal Estate of **Mary Jane Van Riswick**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1888.

MARY VAN RISWICK,

13 TALLMADGE A. LAMBERT,

Administrators, 1219 Mass. ave.

No. 3009. Ad. D. 14. T. A. Lambert, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Myron E. M. Howell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.

LIBBIE ALBERTA HOWELL,

13 Administratrix.

No. 2997. Ad. D. 13. Cole & Cole, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles Palmer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of March, 1888.

13 JOHN D. BARTLETT, Adm'r, 923 R. I. ave.

No. 3011. Ad. D. 14. T. A. Lambert, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Eckstein**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of March, 1888.

13 ANNA LOUISA ECKSTEIN, Adm'x, 109 B st. s. w.

No. 3005. Ad. D. 14. A. H. Jackson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Wilmer W. Hudders**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of March, 1888.

13 N. HUDDERS, Adm'r, 1824 16th st. n. w.

E. A. Newman, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ann Tierney**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of March, 1888.

his

MATTHIAS ⋈ NOONAN,

mark

JAMES H. NOONAN,

13 Ex'rs, 1253 22d st. n. w.

No 3020. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 27th, 1888.

In the case of **Mary A. Burns**, Administratrix of **William L. Ross**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

13 Test: DORSEY CLAGETT, Register of Wills.

No. 2586. Ad. D. 13. C. H. Cragin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 27th, 1888.

In the case of **Chas. H. Cragin**, Administrator d. b. n. of **Mary M. Duffy**, deceased, the Administrator d. b. n. aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator d. b. n. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

13 Test: DORSEY CLAGETT, Register of Wills.

No. 58. Ad. D. 8

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Leon Salomon**, late of Washington, D. C., deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of March, 1888.

13 THERESIE SALOMON, 1316 8th st. n. w.

Simon Wolf, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Carl Mueller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of March, 1888.

13 CHRISTINA MUELLER, Ex'x, 221 B st. n. w.

D. E. Cahill, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of March, 1888.

Mary L. Bowers v. David N. Bowers. } No. 10,948. Docket 27.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **David N. Bowers**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the grounds of non-support and willful and uninterrupted desertion for over three years from the filing of this petition.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
12 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 19th day of March, 1888.

Allie W. Pickerill v. Frank B. Pickerill. } No. 11,023. Docket 28.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendant, **Frank B. Pickerill**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for divorce from bond of marriage on ground of desertion.

By the Court. W. S. COX, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
12 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Nathan B. Clarke**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of March, 1888.
12 HARRIET E. CLARKE, Ex'x, 301 M st. n. w.
No. 3000. Ad. D. 13. F. L. Freeman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 16th, 1888.

In the case of Samuel C. Palmer, Executor of **Sarah C. De Hart**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 13th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

12 Test: DORSEY CLAGETT, Register of Wills.
No. 2410. Ad. D. 12. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 16th, 1888.

In the case of **Mary Jane Gass, Executrix of William Rea Gass**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 6th day of April, A. D. 1888, at 12 o'clock m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

12 Test: DORSEY CLAGETT, Register of Wills.
No. 2649. Ad. D. 13.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Richard Byron**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of February next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of February, 1888.
13 ELIZA BYRON, Ex'x, 419 B st. s. e.
No. 2916. Ad. D. 13. Sam'l C. Mills, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Polly Y. Brownell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of March next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 16th day of March, 1888.
13 TEMPERANCE P. REED, Adm'x, c. t. a.
No. 2993. Ad. D. 13. F. D. McKeuney, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lydia S. Button**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1888.
13 Z. S. BUCKLER, Ex'r, 802 A st. s. e.
No. 2949. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **George W. Morse**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of March, 1888.
13 MARIANNE MORSE, Ex'x, 1905 F st. n. w.
No. 3016. Ad. D. 14. Alex. Porter Morse, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard H. Trunnell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of March, 1888.
13 WILLIAM H. TENNEY, Adm'r, 3142 P st. n. w.
No. 3002. Ad. D. 14. R. P. Jackson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **James McGrann**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1888.
13 HENRY T. McGRANN, Adm'r, c. t. a.
1704 Pa. ave. n. w.
Wm. J. Miller, Proctor.

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Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

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Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
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Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

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Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
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Long on Sales of Personal Property.
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McHenry on Ejectment.
Montagu on Set-off.

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Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
Powell on Devises.
Preston on Abstracts of Title, 2 vols. in one.

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Ray's Medical Jurisprudence of Insanity, 1853.
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Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
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Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
Willis on Trusts.
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VOL. XVI. - - - - - - - No. 15
WASHINGTON, D. C. - - - - APRIL 11, 1888

Supreme Court of the United States.

The case of The New Orleans Water-Works Co. v. The Louisiana Sugar-Refining Co., recently decided by the Supreme Court of the United States, is a lucid exposition of the question of Federal jurisdiction upon writ of error to the highest State courts in suits where the plaintiff in error alleges the obligations of a contract to have been impaired. After exhaustively considering the authorities upon which he relied, Mr. Justice Gray, through whom the court spoke, summed up as follows:

"When the State court decides against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction. When the existence and the construction of a contract are undisputed, and the State court upholds a subsequent law, on the ground that it did not impair the obligation of the admitted contract, it is equally clear that this court has jurisdiction. When the State court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this court has jurisdiction to consider the true construction of the supposed contract, and, if it is of opinion that it did not confer the rights affirmed by the State court, and therefore its obligation was not impaired by the subsequent law, may on that ground affirm the judgment. So, when the State court upholds the subsequent law, on the ground that the contract did not confer the right claimed, this court may inquire whether the supposed contract did give the right, because if it did the subsequent law cannot be upheld. But when the State court gives no effect to the subsequent law, but decides, on grounds independent of that law, that the right claimed was not conferred by the contract the case stands just as if the subsequent law had not been passed, and this court has no jurisdiction."

NOTE-BUYERS and lawyers generally will be interested in the case of Williams v. Huntington, decided March 15 last by the Maryland Court of Appeals. A writer in the *Maryland Law Journal*, in commenting upon the case, says that since this decision it may be taken as the law of Maryland that when it has once been made to appear in a suit upon a promissory note that it was procured or negotiated by fraud the plaintiff cannot recover until he has shown to the satisfaction of the jury that he had no notice of that fraud; and, even though there be no affirmative evidence on the part of the defendant, yet if the plaintiff fails to satisfy the jury of the truth of his story he must be defeated. The case also decides that where a note has been procured by fraud and without consideration the plaintiff's recovery is not to be limited to the amount he actually paid for the note, but he is entitled to the full amount of the note if anything—a decision which differs from those of New York and several other States, but in accordance with the ruling of the Supreme Court of the United States and the general current of authority elsewhere. The point does not appear ever to have been decided before in Maryland, and may be worth noting on that account.

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

BOWMAN
v.
THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

The plaintiff brought his action against the defendant company for damages, setting forth that the company refused to transport from Chicago to Marshalltown, Iowa, for him 5,000 barrels of beer. The company pleaded in defense the following statute of the State of Iowa:

"If any express company, railway company, or any agent or person in the employ of any express company or railway company, or if any common carrier, or any person in the employ of any common carrier, or any person, knowingly bring within this State for any person or persons or corporation, or shall knowingly transport or convey between points or from one place to another in this State for any other person or persons or corporation, any intoxicating liquors without first having been furnished a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending," &c., and that the plaintiff did not furnish the certificate as required by the statute.

The plaintiff demurred, alleging the statute to contravene his rights under the Constitution.

This court, by Matthews, justice, held the law to be unconstitutional, continuing, after an elaborate review of the authorities, as follows:

"It is conceded, as we have already shown, that for the purposes of its policy a State has legislative control, exclusive of Congress, within its territory of all persons, things, and transactions of strictly internal concern. For the purpose of protecting its people against the evil of intemperance it has the right to prohibit the manufacture within its limits of intoxicating liquors; it may also prohibit all domestic commerce in

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them between its own inhabitants, whether the articles are introduced from other States or from foreign countries; it may punish those who sell them in violation of its laws; it may adopt any measures tending, even indirectly and remotely, to make the policy effective until it passes the line of power delegated to Congress under the Constitution. It cannot, without the consent of Congress, expressed or implied, regulate commerce between its people and those of the other States of the Union in order to effect its end, however desirable such a regulation might be.

"The statute of Iowa, under consideration, falls within this prohibition. It is not an inspection law; it is not a quarantine or sanitary law. It is essentially a regulation of commerce among the States within any definition heretofore given to that term or which can be given; and although its motive and purpose are to perfect the policy of the State of Iowa in protecting its citizens against the evils of intemperance, it is none the less on that account a regulation of commerce. If it had extended its provisions so as to prohibit the introduction into the State from foreign countries of all importations of intoxicating liquors produced abroad no one would doubt the nature of the provision as a regulation of foreign commerce. Its nature is not changed by its application to commerce among the States.

"Can it be supposed that by omitting any express declarations on the subject Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not be articles of traffic in the interstate commerce of the country? If so, it has left to each State, according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured, or sold in any State and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not chose, even, to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures, or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases, as well as to those in which it was sought to legislate in behalf of the health, peace, and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it cannot be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States. . . .

"The relation of the police powers of the State to the powers granted to Congress by the Constitution over foreign and interstate commerce was stated by this court in the opinion in the case of Robbins v. Shelby Taxing District, 120 U. S., 489, 493, as follows: 'It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by State laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health, and comfort of persons, and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate or restrict the sale of articles deemed injurious to the health or. morals of the community; the imposition of taxes upon persons residing within the State or belonging to its population, and upon avocations and employments pursued therein, not directly connected with foreign or interstate commerce, or with some other employment or business exercised under authority of the Constitution and laws of the United States, and the imposition of taxes upon all property within the State mingled with and forming part of the great mass of property therein. But in making such internal regulations the State cannot impose taxes upon persons passing through the State or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the State from abroad or from another State, and not yet become a part of the common mass of property therein; and no discrimination can be made by any such regulations adversely to the persons or property of other States; and no regulations can be made directly affecting interstate commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject. . . . In a word, it may be said that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon this subject.'

The section of the statute of Iowa, the validity of which is drawn in question in this case, does not fall within this enumeration of legitimate exertions of the police power. It is not an exercise of the jurisdiction of the State over persons and property within its limits. On the contrary, it is an attempt to exert that jurisdiction over persons and property within the limits of other States. It seeks to prohibit and stop their passage and importation into its own limits, and is designed as a regulation for the conduct of commerce before the merchandise is brought to its border. It is not one of those local regulations designed to aid and facilitate commerce; it is not an inspection law to secure the due quality and measure of a commodity; it is not a law to regulate or restrict the sale of an article deemed injurious to the health and morals of the community; it is not a regulation confined to the purely internal and domestic commerce

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of the State; it is not a restriction which only operates upon property after it has become mingled with and forms part of the mass of the property within the State. It is, on the other hand, a regulation directly affecting interstate commerce in an essential and vital point. If authorized, in the present instance, upon the grounds and motives of the policy which have dictated it, the same reason would justify any and every other State regulation of interstate commerce upon any grounds and reasons which might prompt in particular cases their adoption. It is, therefore, a regulation of that character which constitutes an unauthorized interference with the power given to Congress over the subject. If not in contravention of any positive legislation by Congres, it is nevertheless a breach and interruption of that liberty of trade which Congress ordains as the national policy, by willing that it shall be free from restrictive regulations.

"It may be said, however, that the right of the State to restrict or prohibit sales of intoxicating liquor within its limits, conceded to exist as a part of its police power, implies the right to prohibit its importation, because the latter is necessary to the effectual exercise of the former. The argument is that a prohibition of the sale cannot be made effective except by preventing the introduction of the subject of the sale; that if its entrance into the State is permitted the traffic in it cannot be suppressed. But the right to prohibit sales, so far as conceded to the States, arises only after the act of transportation has terminated, because the sales which the State may forbid are of things within its jurisdiction. Its power over them does not begin to operate until they are brought within the territorial limits which circumscribe it. It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extra-territorial powers cannot be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence. For if they belong to one State they belong to all, and cannot be exercised severally and independently. The attempt would necessarily produce that conflict and confusion which it was the very purpose of the Constitution by its delegations of national power to prevent.

It is easier to think that the right of importation from abroad and of transportation from one State to another includes, by necessary implication, the right of the importer to sell in unbroken packages at the place where the transit terminates; for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of Brown v. Maryland, 12 Wheat., 419, as to foreign commerce, with the express statement, in the opinion of Chief Justice Marshall, that the conclusion would be the same in a case of commerce among the States. But it is not necessary now to express any opinion upon the point, because that question does not arise in the present case. The precise line which divides the transaction, so far as it belongs to foreign or interstate commerce, from the internal and domestic commerce of the State, we are not now called upon to delineate. It is enough to say that the power to regulate or forbid the sale of a commodity after it has been brought into the State does not carry with it the right and power to prevent its introduction by transportation from another State. For these reasons we are constrained to pronounce against the validity of the section of the statute of Iowa involved in this case."

UNITED STATES COURT OF CLAIMS.

OVERTON HOTEL COMPANY v. THE UNITED STATES.

Section 3 of the Bowman act excludes from the jurisdiction of this court all claims for the use and occupation of real estate *begun* by the military forces of the United States in their operations during the war at the seat of war and continued thereafter so long as said forces were engaged in military operations for the suppression of the rebellion.

Chief Justice RICHARDSON delivered the opinion of the court:

It appears that the Overton Hotel, a large building, was owned by the claimant corporation, with the land attached thereto, situated in Memphis, Tenn., when, just before completion for hotel purposes, in November, 1861, it was taken possession of by the Confederate military forces, then in control of Memphis. It was held and used by them exclusively for a military hospital for their sick and wounded soldiers until June 6, 1862, when the city of Memphis was captured by the military forces of the United States.

The property was then immediately taken possession of by the United States forces, and its use as a hospital was continued, not only for their own sick and wounded soldiers, but also for those of the Confederate army found there when captured, until September, 1865, when it was surrendered to the claimant corporation.

The claim of the corporation, transmitted by the Committee on War Claims of the House of Representatives, is compensation for the use and occupation of this property from January 1, 1863, to September, 1865.

The third section of the Bowman act of March 3, 1883 (22 Stat. L., 4, ch. 116), provides as follows:

"Sec. 3. The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States in the operations of said forces during the said war at the seat of war." . . .

There can be no doubt that at the time of the capture of Memphis, and for some time thereafter, this real estate was "at the seat of war," and that it was occupied by the military forces of the United States "in the operations of said forces during the said war" of the rebellion.

It is conceded on the part of the claimant that such was the case up to January 1, 1863, when President Lincoln issued his emancipation proc-

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lamation (12 Stat. L., 1268), wherein he designated what States and parts of States were then in rebellion against the United States, among which no part of Tennessee was named. Rent is not claimed for the occupancy previous to that time.

It is argued that from and after that date it must be held that the whole State ceased to be in rebellion, and that, as no actual collision of the opposing armies engaged in the war took place and no active hostilities were going on there, Memphis was no longer "at the seat of war" within the meaning of the act.

But, whatever may have been the effect of the President's proclamation of emancipation, we are of opinion that Congress, in the passage of the Bowman act, intended to exclude from the jurisdiction of this court claims for the use and occupation of real estate *begun* by the military forces of the United States in their operations during the war at the seat of war and continued thereafter so long as said forces were engaged in military operations for the suppression of the rebellion.

The occupation and use of the hotel property were precisely the same and just as much the result of active warfare after as before the 1st of January, 1863.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

CONDON v. GRAY.

Decided March 19, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

When a chancery sale is confirmed and the terms are complied with the purchaser has a right as of course to an order (usually *nisi*) against a party to the suit in possession or those holding under him.

Such an order is unappealable unless it appear that such party is holding under some title not adjudicated by the decree, or that some new matter has arisen, since the decree which calls for a further adjudication.

Where an order ratifying a chancery sale is appealed from by the party in possession, but no supersedeas bond given, he cannot afterwards appeal from the order for possession, passed merely to carry out the former order, unless the appeal is upon some new and distinct ground not covered by the order of ratification.

The fact that the party in possession, having so appealed from the order of ratification, dies before showing cause to the order *nisi* for possession gives no additional right of appeal to those succeeding him, unless some new title is shown not adjudicated by the decree. If he could not have appealed, had he lived, they cannot.

Mr. Justice COX delivered the opinion of the court.

In the case of Condon v. Gray a question of practice is raised on the right of appeal from an order of the court below. This was a bill filed for a sale of real estate to pay certain legacies. The property was sold, the sale reported, and Jeremiah Dwyer, one of the parties to the suit, who was in possession of the particular property to which the present controversy relates, excepted to the ratification of the sale. His exceptions were overruled and the sale was finally ratified. Thereupon the purchaser applied to the court for an order upon Dwyer to deliver to him the possession of the property sold, and an order was passed on the 1st of January last requiring Dwyer to show cause, on or before the 31st of January, why he should not deliver possession of the property. The order was served on him on the 21st of January. He died, as far as I can gather from the papers, on the 10th of February, without ever having filed an answer, and leaving his wife and some young children in possession of the house.

The purchaser then applied to the court for an order upon the wife to deliver possession, and, after some proceedings unnecessary to mention, she filed her answer showing cause, and there was an absolute order upon her to deliver possession. From that order she appeals to this court, and the purchaser moves to dismiss the appeal on the ground that it was not an appealable order.

We may, perhaps, be assisted in reaching a conclusion in the matter by considering first what would have been the attitude and rights of Jeremiah Dwyer himself if he had survived. When a chancery sale is confirmed and the terms are complied with, the purchaser has a right, as of course, to an order against the party in possession, if he is a party to the suit or is holding under a party to the suit, to deliver possession to him. That order is ordinarily in the *nisi* form, because it might turn out that the defendant was holding under some title not adjudicated by the decree, as a lease originating before the institution of the suit or something of that kind; but, in the absence of that showing, the purchaser is entitled, as of course, to an absolute order for possession. That order is in the nature of an order for the execution of the decree.

In the case of McKomb v. Kankey, found in the notes to the first volume of Bland's Chancery Reports, Kilty, Chancellor, said:

"The general power of the court of chancery to issue an injunction directing possession to be delivered is sanctioned by the practice in England and by the Maryland acts of assembly. The decree for possession and injunction is a process *demandable of right* as much as an attachment or other execution, and ought not to be refused where the power is considered to exist. An application for possession in such cases is founded on the general powers of the court and on the act of 1785, chapter 72, section 25, which provides that the chancellor may cause by injunction the possession of the estate and effects demanded by the bill and petition whereof the possession or sale is decreed to be delivered to the plaintiff or otherwise according to the terms and import of such decree and as the nature of the case may require. Under the last part of the clause the injuction may be modified to suit the particular case."

So that the order for possession is part of the process of executing the decree of sale. It was held in one or two cases which have been referred to in this court that such an order is one upon which an appeal may not be prosecuted to

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the General Term. We do not feel called upon in this case to take as broad ground as that, because we can conceive circumstances under which it would be proper to sustain an appeal. If new matter arises after the decree of sale, which calls for a further adjudication by the court below, it may be perfectly proper that an appeal from that adjudication, if adverse to the party in possession, should be allowed.

But this case is peculiar. Here the order ratifying the sale was appealed from by the party in possession of the property. He did not execute a supersedeas bond, but simply a bond for costs. Now, it cannot be allowed that after appealing from the order ratifying the sale, he can also appeal from the order for possession, passed to carry out that first order upon exactly the same ground on which he appealed from the first order. In other words, he cannot appeal from a judgment and at the same time appeal from the execution on the judgment. If there were new matters alleged calling for a fresh decision by the court below it might be allowed; but, as I say, if he undertakes to appeal from a subsequent order which is merely carrying into execution the prior one it must appear that he prosecutes that appeal on some new and distinct ground not covered by the original order. Otherwise it would be really appealing from a judgment, and then, failing to supersede, attempting to take the same advantage as if he had superseded, by appeal from the order of execution afterwards and executing a new bond. If he could do that he might delay still longer, wait until the order of possession was made absolute, and then, when the order for attachment was issued, appeal from that new order and give a supersedeas bond. That would make the right of appeal an obstruction to the execution of the process of the court, and it would be totally and entirely unreasonable.

In this case the party in possession, who was a party to the suit, had full opportunity of showing some grounds against the making of the order for possession below. He had ten days during his lifetime—in fact, twenty days, I may say—if I have the dates right, but he failed to show any cause at all why the conditional order *nisi* should not be made absolute. Since his death his widow has not shown any new matter on which he might have called for a new adjudication by the court below. She has shown cause which is personal to herself entirely, but none which would have been personal to Dwyer if he had lived; so that, as far as the case appears, there is nothing new since the order ratifying the sale which could be shown by him as cause against the final order for possession. Therefore it appears upon the record that if Dwyer had lived there must have been a final and unappealable order for possession as against him. Unless something new has been shown we must assume that the only grounds on which he would have appealed, if he had lived, from the order for possession, would be the same grounds upon which he appealed from the order ratifying the sale; and that we have said cannot be done.

Is the state of the case changed by his death? In other words, does his death put his family in any better position than he occupied himself? It seems to us it does not. Mrs. Dwyer might have shown, if the fact were so, that Dwyer's interest in this property had been settled for her separate use and had not been adjudged to be sold by the decree. In that case, she would have been entitled to call on the court below to decide upon her claim for possession, and if the decision had been adverse to her, she would have had the right to appeal. But she does not show any title whatever in herself. She admits she is acting simply under her husband. The final order against her for possession is just the order that must have been rendered against her husband if he had lived; and, he having already appealed from the order ratifying the sale and she having shown no new ground for further appeal, we do not think that final order for possession was an appealable order, and therefore the appeal, we think, ought to be dismissed.

MARYLAND COURT OF APPEALS.

WILLIAMS v. HUNTINGTON.

Decided March 15, 1888.

1. When a promissory note is shown to have been tainted with fraud in its inception the burden of proof falls upon the plaintiff to show that he obtained it *bona fide*, for value, in the usual course of business, before maturity and under circumstances that create no presumption that he knew of the existence of the facts that impeached the validity of the instrument.
2. The plaintiff must satisfy the jury of the truth of his testimony as to his good faith, even though there be no affirmative evidence to the contrary on the part of the defendant.
3. To defeat the title of the holder of a promissory note for want of good faith it is not sufficient to show knowledge of facts sufficient to put him on inquiry or to induce a suspicion of defect of title or to convict him of gross negligence. The jury must believe the holder guilty of actual bad faith.
4. A *bona fide* purchaser of a promissory note before maturity from an indorsee may recover the full amount of the note against the maker, although it was purchased at a large discount and was procured by fraud from the maker or fraudulently negotiated.

Appeal from the Court of Common Pleas.

MCSHERRY, J.—The cause of action in this case is a promissory note, dated February 30, 1884, signed by the appellant, and payable in fifteen months after its date to Andrew J. Guise & Co., for $2,500. It was indorsed by the payee, to the order of W. H. Harrison, from whom the appellee claims to have purchased it in good faith, without knowledge or notice of any infirmity, two months before its maturity, for $1,850. Harrison indorsed the note in blank. Upon the trial in the court below, after all the evidence had been submitted, the appellee presented one prayer and the appellant three. The Court of Common Pleas granted that of the appellee and rejected all of the appellant. From these rulings, the judgment being against him, the defendant has appealed.

By the instruction granted at the instance of the appellee the jury were directed that if they should find that the defendant signed the note, that Guise indorsed and passed it to Harrison, that Harrison passed it to the plaintiff for a valuable consideration, before said note became due,

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and that plaintiff purchased the note without notice of any fraud in the obtention of said note, or in the indorsement, or of any failure of consideration, then the plaintiff would be entitled to recover the full amount of the note, and that "there is no evidence in the case legally sufficient from which they can find that the plaintiff had any knowledge or notice of fraud or want of consideration in the making of said note, or in the indorsement thereof to said Harrison."

At the trial it was shown that this note, together with two others, each for the like amount, and another for $800, had been signed by the appellant and made payable to Guise, and that they had been delivered to the latter without any consideration. According to one version of the transaction Guise was to raise the money on these notes, and, after deducting 5 per cent. commissions, he was to pay the net proceeds to the appellant; but, according to Guise's own testimony, the appellant was indebted to him in the sum of $20,000, for alleged services rendered the appellant in some other business affairs. The nature of these services is best stated in the language of Guise himself. He says: "On several occasions I had occasion to go into Mr. Williams's office, and I there met him (the appellant) one day, and he picked up off the table a piece of paper, which afterwards proved to be a deed. I read it over. It was a very short paper, and he said his father and Mr. Orville Horwitz wanted him to sign that deed. I read it carefully, and I said, 'Ernie, if you do that you will sign away your patrimony.' He said he would never do it unless he was crazy or drunk. The result was that they did spirit him away to Europe. When he came back he came right back to me. I advanced some more money. He told me about the young lady he was about to marry, and I think they both came to see me frequently." "And these are the services for which you claim $20,000?" "I do." It appeared, further, that Guise was destitute of means, a borrower of small sums of money, and a man without any business occupation, though at one time he had been a court bailiff. Before he indorsed this note to Harrison he was warned by the appellant and by others not to negotiate it; and a demand was made upon him to surrender all of these notes, because the whole transaction was a swindle and because the appellant had been trapped—tricked into giving these notes without any due consideration. He even entered into negotiations with the wife of the appellant for the return of these notes, in consideration of the payment, by her to him, of the sum of $150. After this he made the indorsement to Harrison, but upon what consideration, if any, does not appear; and, subsequently, the appellee, after first being shown the note on the street and after making inquiries from Guise in regard to it, purchased it. The appellee says that Harrison was "a kind of real-estate broker, agent, and so on;" and that he, the appellee, was engaged in the business of making books on horse races, and that he bought paper and notes.

It has been explicitly decided by this court in Totten v. Bucy, 57 Md., 452, that where the defendant shows that the note sued on had been tainted in its inception or indorsement with fraud, or had been procured without consideration, or lost or stolen before it came to the possession of the holder, the burden of proof is shifted, and it then is "incumbent upon the plaintiff to show that he acquired the note *bona fide*, for value, in the usual course of business, before maturity, and under circumstances that create no presumption that he knew of the existence of the facts that impeached the validity of the instrument." It is obvious, from the brief statement which we have made of the facts bearing upon this branch of the case, that there was evidence before the jury tending to show that the note was obtained without any consideration whatever, and further establishing the fact, without contradiction, that the note was passed by Guise fraudulently, without authority, and, indeed, contrary to the express protest of the appellant. The appellee was, therefore, obliged, before he could legally recover, to establish by proof that he was the *bona fide* owner of the note; that he acquired it for value before maturity and without notice or knowledge of any infirmities in its origin or its transfer. In discharge of the burden thus cast upon him the appellee offered his own testimony and none other. Its credibility was wholly for the jury to determine. They were at liberty to disregard it altogether if in their judgment it was intrinsically improbable, or if it was stamped with, or inherently furnished indications of, its unreliability. But the court in instructing the jury that to entitle the plaintiff to recover they must find that he was such *bona fide* purchaser before maturity, for value, without notice, at the same time also explicitly told them that there was no evidence from which they could find that he had any notice or knowledge of fraud or want of consideration in the making of said note or in the indorsement thereof. The last clause of this instruction was erroneous, because there was evidence before the jury from which they might have legally inferred that the appellee was not the *bona fide* owner of the note, for value, before maturity, and without notice. He was not engaged in the business of buying notes, and he did not acquire this one in the usual course of business. Gambling was his occupation; he bought but one other note about the same time he purchased this one, and it also was a note made by the appellant. He purchased both at very heavy discounts, and one at nearly 30 per cent., only two months before its maturity, and the other at over 50 per cent. While the mere fact that a note has been purchased at a discount will not, ordinarily, be evidence of bad faith, yet where that discount is very large the circumstances may be considered, in connection with all the other facts, in determining the question of the purchaser's good faith. Stewart v. Town of Lauring, 14 Otto, 505. The appellant knew, he says, when buying the note purchased, at a discount of over 50 per cent., that he was buying a lawsuit, though why he knew this he does not explain, further than to state that it it was a note payable on demand. But that fact did not, of itself, involve or imply a lawsuit. This statement of his is only capable of explanation upon the assumption that he had received information from Guise that there were such infirmities attaching to the note as would naturally cause payment to be resisted. He knew Guise, and he was aware that he was a man

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without means and without occupation, and that he was entirely unlikely to have honestly in his possession such a large amount of negotiable paper; or, having it, equally unlikely to dispose of it honestly so near its maturity at such ruinous rates of discount at the very time he was assuring the appellee that the note "was as good as gold." The appellee also knew Harrison, and he knew him likewise to be so devoid of means as to be compelled to borrow small sums of money, and he must therefore have known that it was wholly improbable that he would or could be the owner of a promissory note for so large an amount of money. The peculiar and unusual manner in which and the place where he was first approached by Harrison to buy the note, and the subsequent interviews at the appellee's house, and the visit by the latter to Guise before the purchase, strongly impress upon the whole transaction the characteristics of a fraudulent confederacy. And this is made more striking by the failure to produce Harrison as a witness or to account for his absence. It was perfectly competent for the jury, by bringing these three parties together—the payee, the indorsee, and the holder—as the record presents them, to find, from the evidence before them, that the transfer of the note made by Guise was a mere scheme and device to place the note in a position where it would be difficult to assail it; and to further find that Harrison and the appellee were participants in and parties to that scheme and that device. We, therefore, think that the concluding portion of the instruction was erroneous. The jury should have been allowed to pass upon the question of the appellee's *bona fides* and upon the further question as to whether he had notice or knowledge of the fraud in the inception and in the transfer of the note.

Inasmuch as the first prayer presented by the appellant placed the burden of proof upon the appellee to show *bona fides* in his purchase of the note, in the event of the jury finding the circumstances indicative of the existence of imperfections in its indorsements, we think, for the reasons already assigned, that it correctly presented the law of the case in this respect, and that it should, consequently, have been granted. It places the burden of proof where the law requires it to rest, under such circumstances, and forbids a recovery unless the holder of the note satisfied the jury that he was the *bona fide* owner for value before maturity without notice or knowledge. There is no room to doubt the correctness of this prayer under the authority of Totten v. Bucy and the cases there referred to. The refusal of the court to grant it was such an error as requires a reversal of the judgment.

By the second prayer of the appellant the court was asked to instruct the jury to the effect that in determining whether the plaintiff acted in good faith in purchasing the note the jury might consider the circumstances in the knowledge of the plaintiff at that time; and if they should find that there was anything in those circumstances calculated to excite the suspicion of a reasonable man who desired to avoid participation in the circulation of a fraudulent note, and calculated to cause such a man to make proper inquiry as to its *bona fides*, and that plaintiff failed to make such inquiries, that then they might infer want of good faith from such conduct. The action of the court in rejecting this prayer was without error. It is true that at one time this doctrine obtained the sanction of the courts (Gill v. Cubitt, 3 Barn. & C., 466), but it was soon questioned (Backhouse v. Harrison, 5 B. & Ad., 1098), and was finally distinctly overruled. Goodman v. Harvey, 4 Ad. & E., 870. In Murray v. Lardner, 2 Wall., 40, the leading cases on both sides of this question are fully and ably reviewed. The Supreme Court states the law on this subject in these words: "Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part."

The rule laid down in the class of cases of which Gill v. Cubitt is the antetype is hard to comprehend and difficult to apply. One innocent holder may be more or less suspicious under similar circumstances at one time than at another, and the same remark applies to prudent men. One prudent man may also suspect where another would not, and the standard of the jury may be higher or lower than that of other men equally prudent in the management of their affairs. The rule established by the other line of decisions had the advantage of greater clearness and directness. The same rule was applied by this court in Totten v. Bucy, where it is said: "The question is not what facts the knowledge of which will or will not be sufficient to put the party on inquiry; but the question is whether the party had knowledge of the infirmity of the note at the time of the transfer to him; or, in other words, whether he procured the note in good faith for valuable consideration." See also Com. & Farm. Nat. Bank v. First Nat. Bank, 30 Md., 11; see also Cromwell v. Sac Co., 96 U. S., 51. The question is one of fraud or bad faith on the part of the taker of the note, and that is as susceptible of proof by circumstantial as by direct evidence. If it is sought to be established by the former medium of proof its existence is simply a conclusion drawn from all the facts offered in evidence; and that conclusion cannot be made to depend upon any such uncertain and fluctuating standard as the supposed conduct under similar circumstances, of prudent men, or the suspicions that such men might entertain. All the facts attending the transaction are admissible in evidence, and from those facts, without reference to the supposed or assumed conduct of others if situated in the same way, the jury are to find the fact alleged—the imputed fraud or bad faith—if it can be fairly and reasonably inferred therefrom. There was therefore no error committed by the rejection of this prayer.

By the third prayer the court was asked to instruct the jury that if they should find that the note was procured by fraud or was fraudulently negotiated, then, even though they should find that the plaintiff purchased the note before maturity, in good faith, for value, without notice as to such fraud, the plaintiff would only be entitled to recover the amount actually paid for the note, with interest, in the discretion of the jury. There was no error in the rejection of this prayer. It must

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be admitted, however, that there is some diversity of opinion with respect to the legal proposition it asserts. That proposition is broadly stated in 1 Dan. Neg. Instruments, sec. 758, and in 2 Randolph on Com. Paper, sec. 452; but it seems to us that the authorities quoted or referred to by these authors do not, with a few exceptions, support the text. In our opinion the weight of authority and the reason of the law are decidedly the other way. It would protract this opinion to an unreasonable length if we were to review each of the cases relied on by the appellee and each of those referred to by the text-writers; but it may be stated, as the result of a careful examination of them, that with but few exceptions they may be classified under three heads, viz., first, cases where the note sued upon had been taken *bona fide* as collateral security for a less amount from a party who held it subject to equities or defenses; second, cases where the consideration agreed to be paid for the purchase of the note had been paid only in part, without notice or knowledge of the infirmities attaching to the note, and the residue of the consideration had been paid after the purchaser received such notice; and, third, where the note has, under the provision of some statute been declared void because tainted with usury.

Of the first class the case of Allaire v. Hartshorn, 1 Zab., 663, is an illustration. In that case Hartshorn sued Allaire on a note of $1,500 at ninety days, made by Allaire. The note had been misapplied by one Pettis, to whom it had been entrusted. He pledged it to the plaintiff as a security for $750 borrowed on Hartshorn's check, and also as security for a $100 acceptance. The court charged the jury that if any consideration was given by the plaintiff for the note "they should not limit their verdict to the amount so given, but should find the whole amount due on the face of the note." The case was carried to the Court of Errors and Appeals of New Jersey. The court reversed the judgment, and held that, although a *bona fide* holder, Hartshorn could recover only the amount of his advances. The case of Dresser v. Missouri and Iowa Co., 93 U. S., 92, belongs to the second class. In this class of cases the courts have limited the recovery to the sum paid *before* the purchaser was chargeable with notice of the infirmities of the note, and have refused to allow a recovery of the sum paid *after* obtaining such notice, upon the ground that as to the sum last paid he was not a *bona fide* purchaser without notice.

The case of Eastman v. Shaw, 65 N. Y., 522, and the case of Sauerwine v. Bruner, 1 H. & G., 478, fall within the third class.

Neither of these classes of cases is applicable here. Those which are directly in point are so opposed to the fundamental principles governing the transfer of and the acquisition of title to commercial paper, and are so emphatically repudiated by the very highest authority that we do not feel warranted in following them. Commercial paper may be sold and bought for what it will bring. One who bought in good faith before maturity for value without notice or knowledge of any defects in it acquires a title to it good against the world. Murray v. Lardner, *supra*. The title thus purchased is not a title to a part of the note, but to the whole note. Such a purchaser becomes the absolute owner of it, with every incident and right of complete ownership. But the doctrine of the prayer we are considering limits and qualifies the purchaser's title and ownership, and, though he may have acted in the most absolute good faith, restricts his right of recovery to the sum actually paid by him for the instrument. The adoption of such a doctrine would, in a great measure, fetter and impede the negotiability of all commercial paper sold at a discount, and would require the purchaser, for his own protection, to make his own inquiry in regard to the origin and transfer of the note or to take it without such inquiry at his peril. This would be disastrous in its consequences, and is in direct opposition to the best-considered cases.

In the case of Dresser v. Missouri and Iowa Co., *supra*, suit was brought by the *bona fide* indorsee against the maker, and it was shown that the holder agreed to purchase before maturity and in good faith; that he paid part of the purchase-money, but before paying the residue he was made aware of the fraud through which the note was procured, but notwithstanding that knowledge he paid the residue. He claimed, however, that he was entitled to recover in full; but he was restricted to a recovery of the amount paid before receiving such notice. The court uses this language: "The argument of the plaintiff in error is that negotiable paper may be sold for such sums as the parties may agree upon, and that, whether such sum is large or small, the title to the entire paper passes to the purchaser. This is true, and if the plaintiff had bought the notes, in suit, for $500 before maturity, and without notice of any defense, and paid that sum, or given his negotiable note therefor, the authorities cited show that the whole interest in the notes would have passed to him, and he could have recovered the full amount due upon them." This same question is also very fully considered by the Supreme Court of the United States in Cromwell v. Sac Co., 96 U. S., 51. That was a case where bonds, issued by a county and alleged to be tainted with fraud in their inception, were purchased in good faith, without notice of the fraud, before maturity, for a sum below their par value; and it was insisted that the holder could only recover the amount paid by him and not the face value. The court says: "We are of opinion that a purchaser of a negotiable security, before maturity, in cases where he is not personally chargeable with fraud, is entitled to recover its full amount against the maker, though he may have paid less than its par value, whatever may have been its original infirmity. We are aware of numerous decisions in conflict with this view of the law, but we think the sounder rule, and the one in consonance with the common understanding and usage of commerce, is that the purchaser, at whatever price, takes the benefit of the entire obligation of the maker. . . . This rule in no respect infringes upon the doctrine that one who makes only a loan upon such paper, or takes it as collateral security for a precedent debt, may be limited in his recovery to the amount advanced or secured." We do not deem it necessary to allude to other cases upon this subject.—*Maryland Law Journal.*

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THE COURTS.

Supreme Court of the United States.

April 9.

Wm. L. Aughlinbaugh, of Washington, D. C.; Walter Johnson, of Michigan; W. B. Clarke, of Junction City, Kans.; Hermon A. Conner, of New York; James Simons and B. H. Rutlege, of South Carolina, and Edward Cahill, of Lansing, Mich., were admitted to practice.

162. The Yale Lock Manf'g Co. v. James. Decree affirmed with costs.

868. De Wolf et al. v. Hayes. Decree reversed with costs and cause remanded.

914. Powell v. The Commonwealth of Pa.

1303. Walker, jr., et al. v. The Commonwealth of Pa. Judgments affirmed with costs.

190. Hartranft, collector, &c., v. Oliver et al. Judgment affirmed with costs and interest.

699. Hopkins et al. v. McLure, administrator, &c., et al. Motion to dismiss or affirm postponed to hearing on merits.

1219. The United States v. The Am. Bell Tel. Co. Motion to advance granted and cause assigned for argument on the second day of next term.

1401. The Nash., Chat. and St. L. R. v. The State of Ala. Cause assigned for argument on the second day of the next term.

Hunt, appellant, v. Blackburn et al. Dismissed for the want of jurisdiction.

107. The East. Tenn., Va. and Ga. R. Co. v. The Sou. Tel. Co. Dismissed with costs.

919. Rea et al. v. The Steamboat Eclipse, &c. Motion to dismiss or affirm denied.

1283. The West. Air Line Con. Co. v. McGillis et al. Motion to vacate supersedeas submitted.

Ex parte, H. S. Burdett et al. Motion for leave to file a petition for a writ of mandamus and for a rule to show cause submitted by W. P. Wells for the petitioners.

398. Segrist et al. v. Crabtree. Motion to dimiss submitted.

1077. Marchand v. Livaudais. Motion to dismiss submitted.

166. The Glacier Mountain Silver Min. Co. v. Willis et al. Submitted.

Justice Miller announced that the court would cease to hear arguments on May 4 next, and would adjourn for the term on May 14 next.

212. Robinson et al., in error, v. Fair. Argument continued.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

April 2.

11093. James Heany v. Mary Ann Heany. For divorce. Com. sol., J. G. Bigelow.

April 3.

11094. John A. Donaldson v. Eli Michael et al. To correct deed and annul conveyances. Com sol., F. J. Mackey.

April 6.

11095. Anatasia Patten v. Thomas Marshall et al. For new trustee. Com. sol., John Ridout.

11096 Geo. H. Plant v. Stephen D. Castleman.

11097. Martha M. Burn v. James N. Burn. For divorce. Com. sol., A. C. Bradley.

April 7.

11098. Chas. A. Cox v. Margaret J. Callan. To quiet title to lots. Com. sol., R. T. Morsell.

11099. Chas. D. Collins et al v. Helen Hill McCalla. To discharge liens. Com. sols., Kennedy & Shellaberger.

CIRCUIT COURT.—New Suits at Law.

April 4.

28564. Levi Greif et al v. Wm. Garner. Account, $236.25. Piffs atty, L. Tobriner.

April 5.

28565. Martha Allen v. The B. and P. R. R. Co. Damages, $4,950. Piffs atty, J. G. Payne.

28566. Wm. Phœnix v. Robt. D. Ruffin. Ejectment. Piffs attys, Cook and Cole.

28567. Same v. James Goddard. Ejectment. Piffs attys, Same.

28568. Same v. Daniel McLaughlin. Ejectment. Piffs attys, Same.

28569. E. Francis Riggs et al. v. Geo. M. Robeson. Note, $3,000. Piffs atty, John Selden.

28570. James W. Considine v. Elizabeth Riley. Certiorari. Piffs atty, H. R. Elliott.

April 6.

28571. E. Francis Riggs et al. v. John F. Dezendorf et al. Note, $250. Piffs atty, John Selden.

April 7.

28572. Samuel W. Curriden v. Geo. M. Robeson. Note, $1,697.85. Piffs atty, I. Williamson.

April 9.

28573. Archibald Holmes v. Wm. Z. Partello. Account, $224.69. Piffs atty, J. J. Darlington.

28574. Leopold Sickinger v. Same. Note, $120.75. Piffs atty, Same.

28575. Samuel Jones v. Samuel T. Luckettt et al. Replevin. Piffs attys, Browning and Moss.

28576. Uriah M. Rose v. James G. Wilmarth et al. Appeal. Piffs atty, F. S. Bright.

28577. Pinkert Nathan et al. v. Wm. Z. Partello. Account, $111. Piffs atty, Wm. F. Mattingly.

28578. Wm. A. Henderson v. Thos. L. Cropley. Note, $200.41. Piffs atty, F. T. Browning.

PROBATE COURT.—Justice Cox.

April 6.

Estate John Dull. Petition of Mary. A. Dull for letters, &c.

Estate Ellen M. Mitchell. Will filed.

Estate Chester Goodrich. Letters of administration issued to Francis H. Smith; bond $1,000.

Estate Lucy A. Heaton. Letters testamentary issued to Francis M. Heaton; bond, $1,200.

Estate George E. Moore, sr.

Estate Abbie S. Caldwell. Letters of administration issued to Charles T. Clagett; bond, $800.

Estate Wm. Young. Letters testamentary issued to Jane E. Young; bond, $2,500.

Estate Mary J. Rutherford. Letters of administration issued to James A. Rutherford; bond, $2,000.

Estate Susan Walker. Will admitted to probate. Letters of administration c. t. a. issued to Benjamin Butterworth; bond, $2,000.

Estate Edward A. Paul. Letters of administration issued to Amasa C. Paul.

Estate Margaret Hall. Letters of administration issued to George I. Hall; bond, $2,000.

Estate Joseph Beck. Letters of administration issued to Edward Beuchert; bond, $10,000.

Estate Weltha A. Emmons. Order that S. F. Emmons show cause on or before April 13, 1888, why letters ad colligendum should not issue as prayed in petition of Henry Wise Garnett.

Estate John W. Easton. Will admitted to probate and record.

Estate Jane Dodd. Letters of administration issued to Elizabeth A. Disney; bond, $300.

Estate Wm. T. Underwood. Letters of administration issued to George W. Underwood; bond, $500.

Law Books.

FOR SALE CHEAP—A LAW LIBRARY OF 140 BOOKS. Also a collection of RARE OLD BOOKS. Apply at LATOURETTE LOAN OFFICE, 1009 E st. n. w. 13-3t

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of April, 1888.

Nora O'Leary et al. v. Margaret O'Leary et al. } No. 11,059. Equity Docket 28.

On motion of the plaintiffs, by Mr. Neal T. Murray, their solicitor, it is ordered that the defendants, Margaret O'Leary, Elizabeth O'Leary, Ellen O'Leary, John O'Leary, Mary O'Leary, and Margaret O'Leary, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition, by sale, of the real estate of which John O'Leary died seized and also of the real estate of which Ellen O'Leary died seized.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

15 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Margaret Carter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1888.

MICHAEL J. COLBERT,
EDWIN SUTHERLAND,
Administrators.

15 No. 2806. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1888.

David F. McGowan et al. v. **Nancy Vodery et al.** } No. 11,080. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendants, **The American Tract Society, the Trustees of the Presbyterian Board of Publication and Sabbath-School Work, and the Woman's Benevolent Association**, Washington city, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a construction of the will of Catherine E. Coyle as the certain legacies contained therein.

This order to be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of April, 1888.

Joseph R. Hertford v. **George C. Lewis.** } No. 28,487. Docket 32.

On motion of the plaintiff, by Mr. C. Storrs, his attorney it is ordered that the defendant, **George C. Lewis**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the defendant's goods and chattels, attached on the 28th day of February, A. D. 1888, to the payment of the plaintiff's demands, as set forth in the above-entitled suit.

By the Court. A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of April, 1888.

Horace F. Page v. **John F. Dezendorf et al.** } No. 11,062. Equity Docket 28.

On motion of the plaintiff, by Mr. A. J. Willard, his solicitor, it is ordered that the defendant, **James N. Croft**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish and enforce a right of the plaintiff against real and personal property within the jurisdiction of this Court.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ann Jones**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of April, 1888.

15 SAML. C. PALMER, Ex'r, 2424 Pa. ave. n. w.
No. 3015. Ad. D. 14. H. O. & R. Claughton, Proctors.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Joseph Beck**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of April, 1888.

EDWARD BEUCHERT, Adm'r, 727 H st. n. e.

15 Jno. A. Clarke, Proctor.

CHANCERY SALE OF FINE BUSINESS AND RESIDENT PROPERTY, IMPROVED.

By virtue of a decree of the Supreme Court of the District of Columbia, passed on February 25, 1888, in Equity Cause No. 10,713, John Hurst v. Elizabeth Hurst, we will sell at public auction, in front of the premises, on THURSDAY, APRIL NINETEENTH, 1888, at the hours named, the following real estate:

At HALF PAST FOUR P. M., the south twenty (20) feet front by the depth of lot five (5), in square three hundred and twenty-four (324), improved by a fine new two-story brick house, with all modern improvements, with large brick back building, being house No. 207 12th street northwest. Lot contains 1,000 square feet; rents for $35 per month. The south three (3) feet subject to a right of way in common with the adjoining property.

At FIVE P. M., the north sixteen (16) feet four and one-half (4½) inches front by the depth of lot thirteen (13), in square three hundred and twenty-three (323), improved by a substantial two-story brick building, now under rent, being No. 314 11th street northwest. Lot contains nearly 1,606 square feet; 10-foot alley in rear; first building below Pennsylvania avenue. A fine location for business purposes.

Terms of sale: One-third purchase-money cash, one-third in one year, one-third in two years, or all cash, at purchaser's option. Deferred payments to be secured by trust on property sold and to bear 6 per cent. interest. $300 deposit on each lot required at time of sale. Purchaser must comply with terms of sale in ten (10) days, otherwise a resale will be made at the risk and cost of defaulting purchaser. All conveyancing at purchaser's cost.

The above property may also be purchased at private sale if so desired.

ANDREW B. DUVALL,
Cor. 4½ and D sts. n. w.,
THOMAS M. FIELDS,
46 Fendall Building, cor. 4½ and D sts. n. w., } Trustees.
15 DUNCANSON BROS., Auctioneers.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Michael Corcoran**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of April, 1888.

MARY A. CORCORAN, Ex'x, 1428 L st. n. w.

15 No. 3033. Ad. D. 14. Neal T. Murray, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 3, 1888.

In the matter of the Estate of **John L. Miller**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by George M. Jones.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of April, instant, at 1 o'clock p. m., to show cause why the said Will should not be admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
14 Test: DORSEY CLAGETT, Register of Wills.
No. 3034. Ad. D. 14. Chas. E. Fraser, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of April, 1888.

Joseph C. Wood
v.
Ada Wood. } No. 11,077. Equity Docket 28.

On motion of the plaintiff, by Mr. Thomas C. Taylor, his solicitor, it is ordered that the defendant, Ada Wood, of the city of Natchez and State of Mississippi, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the ground of adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Maria E. Rod'er, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of March, 1888.

14 SARAH E. A. GIBSON,
Adm'x c. t. a., 2143 K st. n. w.
No. 3008. Ad. D. 14. A. S. Taylor, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 31st, 1888.

In the case of Mary Ann and Samuel H. Bacon, Executors of Samuel Bacon, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 20th day of April, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

14 Test: DORSEY CLAGETT, Register of Wills.
No. 2674. Ad. D. 13

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Charles Karsch, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of March next; they may otherwise by law be excluded from all benefit of the said estate,

Given under my hand this 21st day of March, 1888.

14 FRANZISCA KARSCH, Ad'm, 1400 Pa. ave. n. w.
No. 3017. Ad. D. 14. Simon Wolf, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

March 31st, 1888.

In the case of Christopher C. McKenney, Administrator of Jarrad McKenney, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 27th day of April, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

14 Test: DORSEY CLAGETT, Register of Wills.
No. 2684. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of April, 1888.

William H. H. Gorham
v.
Henry H. Dudley, Jr., et al. } No. 11,079. Equity Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Henry H. Dudley, jr., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee to release a deed of trust from George O. Miller to Henry A. Duncanson and Henry H. Dudley, both deceased, to secure $300 on sublot 54, square 861, Washington, D. C., recorded in liber 850, folio 415.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1888.

Catherine Wilson, Guardian,
v.
Catherine Miller, otherwise known as and called Daisy Miller, et al. } No. 11,073. Docket 28.

On motion of the plaintiff, by Mr. E. A. Newman, her solicitor, it is ordered that the defendants, David W. Miller, Frederick H. Bolenius, Robert M. Bolenius, Frank Graff, and David W. Graff, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell certain real estate in the District of Columbia of the infant defendant, Catherine Miller, alias Daisy Miller, and for investment of proceeds.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of April, 1888.

Ida Forrest et al.
v.
Abraham Kendick et al. } No. 11,065. Equity Docket 28.

On motion of the plaintiffs, by Mr. B. F. Leighton, their solicitor, it is ordered that the defendants, Martin F. Kendick and Susan F. Kendick, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell lot fifty-two (52), in Abraham Kendick's et al. subdivision of lots thirty-eight (38) and thirty-nine (39), in square five hundred and three (503), for the purpose of partition.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louise M. Holl, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1888.

CHARLES W. HOLL, Adm'r, 237 Pa. ave. n. w.
15 Wm. H. Dennis, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Susan Kengla, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1888.

MARY F. KENGLA, Ex'x,
West Washington, D. C.
15 No. 2998. Ad. D. 13. J. J. Darlington, Proctor.

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ESTABLISHED 1874.
WM. STONE ABERT, - - - - - Editor
VOL. XVI. - - - - - - - No. 17
WASHINGTON, D. C. - - - - APRIL 25, 1888

A LATE CASE, that of Duval v. Wellman, decided April 9, by the General Term of the City Court of New York, discloses a new industry in the metropolis, but one which the decision of the court is not calculated to foster to any great extent. The defendant Wellman was proprietor of a matrimonial bureau. The plaintiff's assignor, Mrs. Guion, deposited with him $5 as a registration fee and subsequently an additional $50, taking in return the following explicit document:

"JUNE 2, 1887.

"Due Mrs. Guion from Mr. Wellman, $50, August 15, if at that time she is willing to give up all acquaintance with gentlemen who were introduced in any manner by H. B. Wellman. If Mrs. Guion marries the gentleman whom we introduce her to an additional $50 is due Mr. Wellman from Mrs. Guion.

"H. B. WELLMAN,
"E. GUION."

August 16 she signified a willingness to give up all the acquaintances referred to in the agreement and requested a return of the $50, which was refused. Whereupon this suit was brought. The case was decided against the plaintiff in the trial court, but reversed on appeal. Both courts agreed in condemnation of the defendant's business as being contrary to the policy of our laws, but the trial judge considered the plaintiff's assignor as equally guilty of a legal wrong with the defendant, and seemed to think that to allow a recovery would be to sanction and encourage matrimonial agencies, while the Appellate Court did not consider the maxim, *In pari delicto, melior est conditio possidentis*, as applying, and thought the most effectual way of breaking up such institutions is to compel the proprietors thereof to disgorge every dollar they receive from their victims.

"Sound morality," said Chief Justice McAdam, "is the corner-stone of the social edifice. Yet the law has wisely distinguished between the seducer and the seduced, and between the gambling and lottery shop keeper, card-monte player, capper-in, bunco-steerer, and mock auctioneer on the one hand and their victims on the other. It has discriminated in favor of the borrower against the usurious lender, striking in all these cases at the root of the evil in an endeavor to extirpate it, in all cases punishing the criminal, but in none of them denying justice to the confiding and defrauded victim. These instances at least show the tendency of public policy. The matrimonial agent does not occupy a much more favorable position in the eyes of the law than individuals before referred to, for money and property obtained by him are treated as having been procured by a species of constructive fraud." A dissenting opinion was filed by Judge McGown.

We heartily agree with the decision and with the reasoning of the chief justice in support of it, although the result may not be entirely in harmony with all the cases of an analogous kind. Nature does not bestow upon all her children equal strength of mind, and habits of life are so various that it is a travesty on justice to say that an inexperienced and confiding woman, when she enters into an unlawful contract, is in equal fault with a person who, by appealing to the weakness of her heart with seductive promises, skillfully entices her into the net he has spread for his victims. Indeed, it is our decided opinion that not only ought the victims to be allowed to disaffirm such contracts and recover money paid under them, but it ought to be made a penal offense for any one to engage in a business the contracts concerning which are so offensive and contrary to public policy as to be reprobated by the courts.

A CORRESPONDENT of *The Virginia Law Journal* propounds the following curious legal question:

"John Doe applied to A for a loan of $5,000, to be secured by a deed of trust on Doe's real estate. B being present, A consulted him as to the safety of the transaction, whereupon B expressed the opinion that the security was ample, and advised the loan. A never recorded his deed of trust. Afterward Doe applied to B for another loan of $5,000 on the same property. B lent the money, took a deed of trust, and promptly recorded it. Afterward C, a stranger to all the prior transactions, was applied to by Doe for another loan of $5,000 on the same property. C lent the money and took a deed of trust, which he duly recorded. The property ultimately proved insufficient to satisfy all these creditors, and the question is as to the disposition of the fund. Suppose it was $5,000, which by some means or other got into C's hands. B, then claiming under a recorded deed prior to C's, would have the better right, and C would have to yield. On a claim then made by A, B would have to yield, because he took with notice of A's equity. But as soon as A got hold of the money B would make his claim and A would have to yield, because his deed was not recorded, and C took without actual or constructive notice of A's equities, which brings us back to the starting-point. But suppose the property had been sold under a decree and the fund

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was *in the hands of the court*, how would the court proceed—first, if the fund was $5,000, and, second, if it was $10,000?"

We think if $5,000 the court would award it to A; if $10,000, half to B and half to C.

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

WILLIAM L. POWELL v. THE COMMONWEALTH OF PENNSYLVANIA.

Decided April 9, 1888.

1. The fourteenth amendment to the Constitution was not designed to interfere with the power of the States to preserve, by appropriate legislation, the public health and the public morals.
2. A statute of a State, enacted for the protection of the public health, which prohibits the manufacture, sale, or possession with intent to sell of a certain article as an article of food, within the territorial limits of the State, will not be declared unconstitutional when there is nothing of which the court can take judicial cognizance to indicate that many or most kinds of said article do not contain ingredients that are or may become injurious to health.
3. In a prosecution for the violation of such a prohibitory statute evidence that the article sold was pure and wholesome is immaterial and was properly ruled out at the trial.

Mr. Justice HARLAN delivered the opinion of the court.

This writ of error brings up for review a judgment of the Supreme Court of Pennsylvania, sustaining the validity of a statute of that Commonwealth relating to the manufacture and sale of what is commonly called oleomargarine butter. That judgment, the plaintiff in error contends, denies to him certain rights and privileges specially claimed under the fourteenth amendment to the Constitution of the United States.

By acts of the General Assembly of Pennsylvania, one approved May 22, 1878, and entitled "An act to prevent deception in the sale of butter and cheese," and the other approved May 24, 1883, and entitled "An act for the protection of dairymen, and to prevent deception in sales of butter and cheese," provision was made for the stamping, branding, or marking, in a prescribed mode, manufactured articles or substances in semblance or imitation of butter or cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream, but into which oil, lard, or fat, not produced from milk or cream, entered as a component part, or into which melted butter or any oil thereof had been introduced to take the place of cream. Laws of Penna., 1878, p. 87; 1883, p. 43.

But this legislation, we presume, failed to accomplish the objects intended by the Legislature. For, by a subsequent act, approved May 21, 1885, and which took effect July 1, 1885, entitled "An act for the protection of the public health and to prevent adulteration of dairy products and fraud in the sale thereof," it was provided, among other things, as follows:

"Sec. 1. That no person, firm, or corporate body shall manufacture out of any oleaginous substance, or any compound of the same, other than that produced from unadulterated milk or of cream from the same, any article designed to take the place of butter or cheese produced from pure, unadulterated milk or cream from the same, or of any imitation or adulterated butter or cheese, nor shall sell, or offer for sale, or have in his, her, or their possession, with intent to sell the same as an article of food.

"Sec. 2. Every sale of such article or substance, which is prohibited by the first section of this act, made after this act shall take effect, is hereby declared to be unlawful and void, and no action shall be maintained in any of the courts in this State to recover upon any contract for the sale of any such article or substance.

"Sec. 3. Every person, company, firm, or corporate body who shall manufacture, sell, or offer or expose for sale, or have in his, her, or their possession with intent to sell, any substance, the manufacture and sale of which is prohibited by the first section of this act, shall, for every such offense, forfeit and pay the sum of one hundred dollars, which shall be recoverable with costs by any person suing in the name of the Commonwealth as debts of like amounts are by law recoverable; one half of which sum, when so recovered, shall be paid to the proper county treasurer for the use of the county in which suit is brought and the other half to the person or persons at whose instance such a suit shall or may be commenced and prosecuted to recovery.

"Sec. 4. Every person who violates the provisions of the first section of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than three hundred, or by imprisonment in the county jail for not less than ten nor more than thirty days, or both such fine and imprisonment for the first offense and imprisonment for one year for every subsequent offense."

The plaintiff in error was indicted, under the last statute, in the Court of Quarter Sessions of the Peace in Dauphin County, Pennsylvania. The charge in the first count of the indictment is that he unlawfully sold, "as an article of food, two cases, containing five pounds each, of an article designed to take the place of butter produced from pure, unadulterated milk or cream from milk, the said article so sold, as aforesaid, being an article manufactured out of certain oleaginous substances and compounds of the same, other than that produced from unadulterated milk or cream from milk, and said article so sold, as aforesaid, being an imitation butter." In the second count the charge is that he unlawfully had in his possession, "with intent to sell the same, as an article of food, a quantity, viz., one hundred pounds, of imitation butter, designed to take the place of butter produced from pure, unadulterated milk or cream from the same, manufactured out of certain oleaginous substances or compounds of the same other than that produced from milk or cream from the same."

It was agreed, for the purposes of the trial, that the defendant, on July 10, 1885, in the city of Harrisburg, sold to the prosecuting witness,

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as an article of food, two original packages of the kind described in the first count; that such packages were sold and bought as butterine, and not as butter produced from pure, unadulterated milk or cream from unadulterated milk; and that each of said packages was, at the time of sale, marked with the words, "Oleomargarine butter," upon the lid and side in a straight line, in roman letters half an inch long.

It was also agreed that the defendant had in his possession one hundred pounds of the same article, with intent to sell it as an article of food.

This was the case made by the Commonwealth.

The defendant then offered to prove by Professor Hugo Blanck that he saw manufactured the article sold to the prosecuting witness; that it was made from pure animal fats; that the process of manufacture was clean and wholesome, the article containing the same elements as dairy butter, the only difference between them being that the manufactured article contained a smaller proportion of the fatty substance known as butterine; that this butterine existed in dairy butter in the proportion of from 3 to 7 per cent., and in the manufactured article in a smaller proportion, and was increased in the latter by the introduction of milk and cream; that this having been done, the article contained all the elements of butter produced from pure, unadulterated milk or cream from the same, except that the percentage of butterine was slightly smaller; that the only effect of butterine was to give flavor to the butter, and that it had nothing to do with its wholesomeness; that the oleaginous substances in the manufactured article were substantially identical with those produced from milk or cream; and that the article sold to the prosecuting witness was a wholesome and nutritious article of food, in all respects as wholesome as butter produced from pure, unadulterated milk or cream from unadulterated milk.

The defendant also offered to prove that he was engaged in the grocery and provision business in the city of Harrisburg, and that the article sold by him was part of a large and valuable quantity manufactured prior to the 21st of May, 1885, in accordance with the laws of this Commonwealth relating to the manufacture and sale of said article, and so sold by him; that for the purpose of prosecuting that business large investments were made by him in the purchase of suitable real estate, in the erection of proper buildings, and in the purchase of the necessary machinery and ingredients; that in his traffic in said article he made large profits; and if prevented from continuing it the value of his property employed therein would be entirely lost and he be deprived of the means of livelihood.

To each offer the Commonwealth objected upon the ground that the evidence proposed to be introduced was immaterial and irrelevant.

The purpose of these offers of proof was avowed to be: (1) To show that the article sold was a new invention, not an adulteration of dairy products, nor injurious to the public health, but wholesome and nutritious as an article of food, and that its manufacture and sale were in conformity to the acts of May 22, 1878, and May 24, 1883. (2) To show that the statute upon which the prosecution was founded was unconstitutional, as not a lawful exercise of police power, and, also, because it deprived the defendant of the lawful use "of his property, liberty, and faculties, and destroys his property without making compensation."

The court sustained the objection to each offer and excluded the evidence. An exception to that ruling was duly taken by the defendant.

A verdict of guilty having been returned, and motions in arrest of judgment and for a new trial having been overruled, the defendant was adjudged to pay a fine of one hundred dollars and costs of prosecution, or give bail to pay the same in ten days, and be in custody until the judgment was performed. That judgment was affirmed by the Supreme Court of the State. 114 Penna. St., 265.

This case, in its important aspects, is governed by the principles announced in Mugler v. Kansas, 123 U. S., 623.

It is immaterial to inquire whether the acts with which the defendant is charged were authorized by the statute of May 22, 1878, or by that of May 24, 1883. The present prosecution is founded upon the statute of May 21, 1885; and if that statute be not in conflict with the Constitution of the United States, the judgment of the Supreme Court of Pennsylvania must be affirmed.

It is contended that the last statute is void in that it deprives all coming within its provisions of rights of liberty and property without due process of law and denies to them the equal protection of the laws—rights which are secured by the fourteenth amendment of the Constitution of the United States.

It is scarcely necessary to say that if this statute is a legitimate exercise of the police power of the State for the protection of the health of the people and for the prevention of fraud it is not inconsistent with that amendment; for it is the settled doctrine of this court that, as government is organized for the purpose, among others, of preserving the public health and the public morals, it cannot divest itself of the power to provide for those objects, and that the fourteenth amendment was not designed to interfere with the exercise of that power by the States. Mugler v. Kansas, 123 *Id.*, 663; Butchers' Union Co. v. Crescent City Co., 111 U. S., 746, 751; Barbier v. Connolly, 113 *Id.*, 27; Yick Wo v. Hopkins, 118 *Id.*, 356.

The question, therefore, is whether the prohibition of the manufacture, out of oleaginous substances, or out of any compound thereof other than that produced from unadulterated milk or cream from unadulterated milk, of an article designed to take the place of butter or cheese produced from pure, unadulterated milk or cream from unadulterated milk, or the prohibition upon the manufacture of any imitation or adulterated butter or cheese, or upon the selling or offering for sale, or having in possession with intent to sell, the same as an article of food, is a lawful exercise by the State of the power to protect by police regulations the public health.

The main proposition advanced by the defendant is that his enjoyment upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling

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or trade, and of acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the fourteenth amendment. The court assents to this general proposition as embodying a sound principle of constitutional law. But it cannot adjudge that the defendant's rights of liberty and property, as thus defined, have been infringed by the statute of Pennsylvania, without holding that, although it may have been enacted in good faith for the objects expressed in its title, namely, to protect the public health and to prevent the adulteration of dairy products and fraud in the sale thereof, it has, in fact, no real or substantial relation to those objects. Mugler v. Kansas, 123 U. S., 623, 661. The court is unable to affirm that this legislation has no real or substantial relation to such objects.

It will be observed that the offer in the court below was to show by proof that the particular articles the defendant sold, and those in his possession for sale, in violation of the statute, were, in fact, wholesome or nutritious articles of food. It is entirely consistent with that offer that many, indeed, that most, kinds of oleomargarine butter in the market contain ingredients that are or may become injurious to health. The court cannot say, from anything of which it may take judicial cognizance, that such is not the fact. Under the circumstances disclosed in the record, and, in obedience to settled rules of constitutional construction, it must be assumed that such is the fact. "Every possible presumption," Chief Justice Waite said, speaking for the court in Sinking-Fund cases, 99 U. S., 718, "is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule." See also Fletcher v. Peck, 6 Cranch, 128; Dartmouth College v. Woodward, 4 Wheat., 518, 625; Livingston v. Darlington, 101 U. S., 401.

Whether the manufacture of oleomargarine, or imitation butter, of the kind described in the statute, is, or may be, conducted in such a way or with such skill and secrecy as to baffle ordinary inspection, or whether it involves such danger to the public health as to require, for the protection of the people, the entire suppression of the business, rather than its regulation in such manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of fact and of public policy which belong to the legislative department to determine. And as it does not appear upon the face of the statute, or from any facts of which the court must take judicial cognizance, that it infringes rights secured by the fundamental law, the legislative determination of those questions is conclusive upon the courts. It is not a part of their functions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions. The power which the Legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large. While both its power and its discretion must be so exercised as not to impair the fundamental rights of life, liberty, and property, and while, according to the principles upon which our institutions rest, "the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself;" yet, "in many cases of mere administration, the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of public opinion or by means of the suffrage." Yick Wo v. Hopkins, 118 U. S., 370. The case before us belongs to the latter class. The Legislature of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk or cream from unadulterated milk, to take the place of butter produced from unadulterated milk or cream from unadulterated milk, will promote the public health and prevent frauds in the sale of such articles. If all that can be said of this legislation is that it is unwise, or necessarily oppressive to those manufacturing or selling wholesome oleomargarine, as an article of food, their appeal must be to the Legislature or to the ballot-box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government.

It is argued, in behalf of the defendant, that if the statute in question is sustained as a valid exercise of legislative power, then nothing stands in the way of the destruction by the legislative department of the constitutional guarantees of liberty and property. But the possibility of the abuse of legislative power does not disprove its existence. That possibility exists even in reference to powers that are conceded to exist. Besides, the judiciary department is bound not to give effect to statutory enactments that are plainly forbidden by the Constitution. This duty, the court has said, is always one of extreme delicacy; for, apart of the necessity of avoiding conflicts between co-ordinate branches of the Government, whether State or national, it is often difficult to determine whether such enactments are within the powers granted to or possessed by the Legislature Nevertheless, if the incompatibility of the Constitution and the statute is clear or palpable, the courts must give effect to the former. And such would be the duty of the court if the State Legislature, under the pretense of guarding the public health, the public morals, or the public safety, should invade the rights of life, liberty, or property, or other rights, secured by the supreme law of the land.

The objection that the statute is repugnant to the clause of the fourteenth amendment forbidding the denial by the State to any person within its jurisdiction of the equal protection of the

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laws is untenable. The statute places under the same restrictions, and subjects to like penalties and burdens, all who manufacture, or sell, or offer for sale, or keep in possession to sell, the articles embraced by its prohibitions, thus recognizing and preserving the principle of equality among those engaged in the same business. Barbier v. Connolly, 117 U. S.; Soon Hing v. Crowley, *Id.*, 703; Missouri Pacific Railway Co. v. Humes, 115 *Id.*, 519.

It is also contended that the act of May 21, 1885, is in conflict with the fourteenth amendment in that it deprives the defendant of his property without that compensation required by law. This contention is without merit, as was held in Mugler v. Kansas.

Upon the whole case we are of opinion that there is no error in the judgment, and it is, therefore, affirmed.

UNITED STATES COURT OF CLAIMS.

SAMUEL H. SAVAGE, Executor of Henry Savage.
v.
THE UNITED STATES.

The claim of the plaintiff's testator accrued in 1858. From prior to the time when the claim accrued till November, 1870, the testator was "beyond the seas," but at the latter date he came to this country and remained four months. In July, 1868, while Mr. McCulloch was Secretary of the Treasury, the claim was presented to the Treasury Department, and rejected by the Comptroller in September of the same year. March, 1870, Mr. McCulloch having been succeeded by Mr. Boutwell, the demand was renewed before the Treasury, but no action was taken thereon by that Department. March 2, 1885, a formal demand was made by the plaintiff to the State Department, which was transmitted by the head of that Department to this court. *Held*, that the statute of limitations began to run November, 1870; and it not appearing that the claim was before the State Department prior to March 2, 1885, that must be taken as the date of commencing suit, and that, therefore, the claim is barred by lapse of time.

Chief Justice RICHARDSON delivered the opinion of the court.

The claim in this case accrued nearly thirty years ago, September 14, 1858, when the claimant's testator ceased performance of the services for which compensation is demanded. The action was not commenced by voluntary petition, but by transmission from the Secretary of State under the provisions of section 1063 of the Revised Statutes.

The defendants contend, among other defenses, that the court is without jurisdiction by reason of the statute of limitations (Rev. Stat., 1069), and have filed a motion to dismiss on that account.

In Lippett's case (100 U. S. R., 663) the Supreme court say that by the act of 1868 (now Rev. Stat., section 1063)—

"Authority was given to the head of any executive department, whenever any claim was made upon that department, . . . to cause such claim, with the documents pertaining thereto, to be transmitted to the Court of Claims, to be proceeded in as if originally commenced by the voluntary action of the claimant. . . . Where the claim is of such a character that it may be allowed and settled by an executive department, or may, in the discretion of the head of *such department*, be referred to the Court of Claims for final determination, the filing of the petition should relate back to the date when it was first presented to the department for allowance and settlement. . . . The cases thus transmitted for judicial determination are, in the sense of the act, commenced against the Government when the claim is originally presented at the department for examination and settlement."

In Finn's case (123 U. S. R., 227) the Supreme Court held that unless the claim were presented to the proper department within six years after it accrues such department could not give this court jurisdiction of it by transmission under that act.

The claimant, in avoidance of this bar, relies upon the fact that his testator, from the year 1827 until his death in 1881, was domiciled in Guatemala, "beyond the seas," and so was exempted from the limitation of section 1069 by the proviso thereof. But it appears by Finding I that the testator came to this country in November, 1870, and remained here some four months.

It is stated in Angell on Limitations, section 196, and is well-settled and familiar law, that the invariable construction which has been given to such a proviso in statutes of limitation is—

"That where it is incumbent on the plaintiff to prove that he labored under any disability he must show that it was a continuing disability from the first, and that when the statute has once begun to run no subsequent disability will impede it."

Upon the return of the claimant's testator to this country in 1870 the six years' limitation of the statute immediately began to run, and it had run out several years before the making of this claim upon the State Department in 1885.

The court is therefore without jurisdiction of the case unless other proceedings, set out in the findings, constitute such a making of claim against the proper department within six years after the testator's return as take it out of the operation of the statutes.

The "proper department" referred to in the statute is undoubtedly that one in which the claim originated and to whose appropriation, in case of payment, it is to be charged (Rev. Stat., 3675), and it is the head of "such department" who may transmit the same to this court when made against it.

That question was considered in one of the first cases referred to this court under the act of 1868, the Delaware Steamboat Company's case (5 C. Cls. R., 55). The claim had been presented to the War Department, where it was properly payable according to the provisions of the statute, now Revised Statutes, section 3673, which applies only to the War and Navy Departments. It was there disallowed. The claimant presented the same demand at the Treasury Department, where an account was stated by the accounting officers and a balance found due to

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the company, and the same was forwarded to the War Department for a requisition under said provision. The claimant also demanded of the War Department that a requisition should issue and payment made. The Secretary of War refused to comply with the requests, and thereupon he transmitted the case to this court.

But there are many claims and demands, like the one now in suit, which are not required to be made upon any other department before presentation to the Treasury Department. The Revised Statutes, in section 236, provides that—

"All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury."

Parties may go directly to the Treasury Department if they choose and seek payment independently of any action on their part in the department where their claims originate.

The claimant elected the latter course and pursued his remedy in the latter forum instead of making a claim against the Department of State until 1885.

On the 30th of July, 1868, the attorney for the deceased presented his claim to Mr. McCulloch, Secretary of the Treasury, and on the 2d day of September following he renewed his demand by a letter to the same Secretary.

On the 4th of September, 1868, the First Comptroller, who had jurisdiction of the matter, notified the attorney that the claimant had "no legal claim against the Government." This was a rejection of the claim and the end of the case in that department.

The attorney, on the 4th of March, 1870, renewed the demand by letter addressed to the Secretary, then Mr. Boutwell, who had succeeded Mr. McCulloch, but it does not appear that the case was reopened, nor that any reply was made to this communication, apparently because, according to department law and practice, a case disposed of under one Secretary cannot be reopened by his successor, except on account of newly discovered evidence or some error apparent in the record. Jackson's case, 19 C. Cls. R., 508; Rollins & Presbrey's case, 23 C. Cls. R., —.

While pending in the Treasury Department the claim might have been settled and paid, if there were an appropriation applicable to it, or it might have been transmitted to this court by the Secretary of the Treasury, on the certificate of the Auditor or Comptroller, if not upon his own motion, under the statutes, independently of the State Department. As it was not referred to the Secretary of State, as the claim of the Delaware Steamboat Company was sent to the Secretary of War for requisition and payment, but was rejected, it cannot be held to have been made upon the State Department by the proceedings in the Treasury.

It was not until fifteen years after the case had been disposed of in the Treasury Department that the executor of the original claimant, who had died in the mean time, made formal claim against the Department of State by a letter addressed to the Secretary March 2, 1885. That letter was sent to this court by the head of the Department transmitting the claim, and was the foundation of his action in that regard. In our opinion the presentation of it to the Department of State was the filing of the petition in the case now before us within the meaning of the statute of limitation as interpreted by the Supreme Court in the Lippitt case.

The only previous connection the State Department had with the matter was that Acting Secretary Hunter answered certain inquiries made by the First Comptroller in 1868, which had reference to the claimant's demand on the Treasury, although in which the claimant's claim was not mentioned, and that in 1870 Secretary of State Fish furnished to the claimant's counsel information asked for by him for use before the Comptroller, as stated in his letter of inquiry.

It is evident from the findings that it was never understood by the parties—the claimant and those representing him on the one side and the officers of the State Department on the other—that the claim was ever presented to that Department for settlement and payment until demand was made by the claimant's attorney March 2, 1885. It is not to be presumed that the State Department would have held such a claim under advisement for fifteen years, nor that the claimant would have let it so remain without at least an inquiry for so long a period.

The petition must be dismissed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

MARGARET CAPRON, Executrix, v. A. B. CAPRON ET AL.

No. 10,565. EQUITY.

Decided April 2, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. Where a legacy is given to the legatee, or, in case of his death, to his heirs, the legacy does not lapse by the death of the legatee during the life of the testator, but will go to the heirs.
2. A bequest of "my Government bonds," "my consols," &c., is a specific legacy, and if the testator disposes of the bonds or consols in his lifetime the legacy is adeemed.
3. But a bequest simply of "Government bonds" or other described securities is a pecuniary legacy to be provided for by the application of so much money for their purchase; and it makes no difference whether at the time of the bequest or afterward the testator owns or does not own the particular securities he speaks of.
4. Where the testator bequeaths to his widow for life the interest of a sum of money out of his estate, the principal, upon her death, to A and B, and the widow elects, instead, to take her distributive share under the law, A and B become entitled to the payment of the principal remaining immediately, and are not postponed to the time of her death.
5. If, after payment of the widow's distributive share, the amount of the estate remaining is not sufficient to satisfy all the legacies in full they must abate *pro rata*.

STATEMENT OF THE CASE.

Bill in equity filed by an executrix to obtain

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the construction of a will. Certified to the General Term for hearing in the first instance.

The case was heard upon an agreed statement of facts, which was as follows:

"Horace Capron died at Washington, 22d of February, 1885, leaving a widow (Margaret), two sons of full age (Albert B. and Osmond J.), and two granddaughters, children of Elizabeth, a daughter, who died in his lifetime, viz., Mrs. Rider and Mrs. Russell, both now married.

"General Capron, while in the employ of the Government of Japan, executed his will at Tokio, 18th of May, 1874. At this date he owned $12,800 in Government registered bonds of the United States, of the loan of 1867, bearing interest at 6 per cent. He added to this investment until 30th of July, 1875, when he owned $18,800 of such registered bonds. In November, 1877, he held $3,500 registered bonds of the loan of 1881, bearing 5 per cent. interest. August 11, 1875, he began to dispose of these securities, and by 29th of November, 1878, he had no longer any registered Government bonds, nor did he ever afterward own any.

"The will was duly probated and the widow qualified as executrix. The inventory shows that at the time of his decease the testator owned a note of $12,000, secured by a deed of trust, a certain indebtedness of his son Albert for money loaned, a collection of Japanese *curios* (thought to be worth $10,000 if advantageously disposed of), a library, and some personal effects.

"Osmond Capron lives in Illinois and is blind. Owing to this infirmity he has not supported himself, but has received a sum regularly from his father for board and clothing, which has been continued temporarily by the executrix at $25 a month.

"The widow, having waived the provisions of the will, has received a third of the ready money available for distribution under the law, leaving a balance, stated at $6,821.43, and the *curios* to be disposed of."

The material parts of the will are given in the opinion of the court.

FRANK W. HACKETT for complainant.

EDWARDS & BARNARD for defendants.

Mr Justice COX delivered the opinion of the court.

The bill in this case was filed by Margaret Capron, widow and executrix of Horace Capron, asking the court to construe the will of her husband. The provisions of the will we are called upon to consider are as follows:

"It is my will that the income from $15,000 in registered Government bonds of the United States shall be subject to the order and at the disposal of my beloved wife Margaret during her natural life, subject to a condition hereinafter to be named."

A further provision is:

"It is also my will that on the demise of my beloved wife Margaret or in the event she should marry again the bonds of the United States Government set apart for her benefit in this will shall revert in equal amounts to my son Albert and my daughter Elizabeth, or their heirs in case of the death of either my son or daughter."

Then this further provision:

"It is also my will that the income from $6,000 in Government registered bonds of the United States shall be set apart and appropriated for the maintenance and support of my poor, unfortunate son Osmond during his natural life, the interest to be collected and disbursed under the direction of his brother Albert, who I intrust with this delicate duty, with the full hope that it will be faithfully done for the greatest comfort of his poor brother.

"It is further my will that in the case of my son Osmond dying without issue the United States bonds set apart for his use shall revert back to my son Albert and daughter Elizabeth in the same manner as in the case provided for those to my wife."

In other words, there was a life interest in $15,000 given to the wife in full of her interest in the estate, with the exception I shall presently mention, and a life interest in $6,000 given to the son Osmond; with a future interest in both funds to the son Albert and daughter Elizabeth, after the deaths of the widow and Osmond. The daughter Elizabeth died during the lifetime of the testator, but there is a provision in the will which prevents her legacy from lapsing, because it says it shall revert "to my son Albert and daughter Elizabeth, *or their heirs in case of the death of either my son or daughter.*" So that the representatives, the next of kin, it being personal property, are the successors to the daughter's share.

There is one other provision of the will to be noticed:

"Of the many *curios* collected in Japan I desire my beloved wife to take such as she most desires to keep for her own special use, and that she will divide the remaining articles between my son Albert and my daughter Elizabeth, now Mrs. G. G. Mayo; and I feel well assured that my good wife will do exact and impartial justice."

As to the share of these *curios* given to Mrs. Mayo there is a lapse of that legacy. There is no provision that in case of her death it shall go to her representatives. So that that becomes a part of the general estate, to be disposed of according to the residuary clause in the codicil.

The first question presenting itself is, whether these legacies are specific legacies, or what the law calls general or pecuniary legacies; that is, were they bequests of so many United States bonds owned by him specifically or were they bequests of so much money to be laid out in Government bonds? The question is very material, for this reason: At the time the will was executed, the testator was the owner of some $12,800 of Government bonds, and he afterward acquired others, swelling the amount to $18,800. But before his death he disposed of the whole of them, so that when he died he did not own any Government bonds. If these are to be treated as specific bequests of the bonds he owned, the legacies adeemed or revoked by operation of law.

On the other hand, if these are to be considered bequests of so much money to be laid out in Government bonds, then the legacies are not affected by the disposition made by the testator in his lifetime of the bonds that he owned at the time the will was executed or afterward ac-

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quired, and the legacies must be paid if the condition of his estate permits it.

We are of opinion that these are what the law calls *general* or *pecuniary* legacies. The law seems to be very clear, that when a testator bequeaths "my Government bonds," "my consols," &c., the legacy is specific, and if the testator disposes of them in his lifetime the legacy becomes inoperative as to those.

On the other hand, if the will bequeaths Government bonds or consols, that is a pecuniary legacy. If it bequeaths $10,000 of consols or bonds of any description, that means that that property is to be provided for out of his estate by the application of so much money as may be necessary to do it.

It is to be remarked that this interpretation of the legacy is not affected by the fact that, at the time, the testator owned the very kind of securities he speaks of. It is a direction that out of his estate, whether he owns the securities at the time or not, it shall be provided for by the moneys that he leaves. Of course if he has securities they can be applied; if not, money may be applied to the purchase of them. It does not make any difference whether he had the securities at the time of making the will or acquired them between that time and the date of his death, or never had them at all. If, by the terms of the will, the bequest is a pecuniary or general legacy it must be paid by the executor, whether there are securities in the estate, of the kind denominated in the will, or not.

Of course, the case would be still stronger if the testator did not own the securities described and which he undertakes to bequeath; and that consideration is applicable to this case, because the testator, at the time the will was executed, owned $12,800 of Government bonds and undertook to dispose of $21,000.

Another circumstance, however, has intervened, which breaks up, to some extent, the scheme of the will. The will bequeaths the interest of $15,000 to the wife, in full of all her claims upon the estate, with the exception of the *curios*, from which she was authorized to make a selection. But the widow renounced the provision made for her in the will and chose to stand upon her legal right and take one-third, in specie, of the whole personal estate. The consequence of this can best be illustrated by supposing that the amount of money left by the testator was just enough to provide for these two legacies—that is, $15,000 for one and $6,000 for the other. The first consequence of this step by the widow is that, having taken out of the fifteen-thousand-dollar fund everything she is entitled to, the remainder becomes the absolute property of the son Alfred and the daughter Elizabeth. There is, therefore, no occasion for deferring payment to them until the widow's death, and it becomes payable to them immediately.

The other consequence is, that if enough is not left of the personal property to pay the two legacies in full, they must abate in proportion, and the widow would be entitled to take $5,000 out of the fifteen-thousand-dollar legacy and $2,000 out of the six-thousand-dollar legacy. The balance, $10,000, from the first legacy would have to be given to Alfred and Elizabeth, and the balance of the next legacy, $4,000, would have to be invested for the benefit of the son Osmond.

We are not advised exactly of the condition of the entire estate. If the condition of the estate admits it the whole $15,000, which was bequeathed to the wife for life, with remainder to Albert and the daughter, would be payable to them, and $6,000 should be invested for the benefit of the son Osmond. If the estate is not sufficient to pay in full, then it would have to be divided into two parts, bearing the ratio of 6 to 15. The sum represented by the latter would be payable immediately to Albert and his nieces. The sum represented by the former would have to be invested for the benefit of Osmond.

One-third of the *curios* bequeathed to Mrs. Mayo become also available for the payment of these legacies if there is not sufficient from the rest of the estate to pay them in full.

That is about all we can say at present without further information with regard to the estate.

NOTES OF CASES.

INSURANCE POLICY—CONSTRUCTION OF CONDITION IN.—A policy of insurance contained a condition that if the property insured should be encumbered after the date of the policy and the assured should neglect or fail to give a written notice thereof to the company, and to obtain a written consent to a continuance of the policy, the insurance should be void and of no effect. A loss having occurred under the policy, the company defended on the ground that after the date of the policy a judgment had been entered upon the official bond of the insured as treasurer of a certain association by notice of a warrant of attorney thereto annexed. The plaintiff offered evidence to show that the bond had been given by him upon the express condition that it was not to be entered up, and that the entering up was done in bad faith, in breach of that condition, without the knowledge and consent of plaintiff, who in accordance had failed to notify the insurance company. The evidence was admitted in the trial court. *Held*, that the clause in the policy was a covenant against encumbrances, and that it was immaterial whether the plaintiff had actual knowledge of encumbrances or not. He was bound to know of them, having covenanted against them, and therefore the evidence was improperly admitted. Penna. Mutual Fire Ins. Co. v. Schmidt, S. C. Penna.

LIABILITY OF MUNICIPAL CORPORATION FOR INJURY.—Patrick Kelley kept a tavern on Market street, in the city of Philadelphia. On the pavement in front of his tavern, close to the curbstone, he had piled a number of empty ale and beer half-barrels. The barrels were placed on their ends, and on top of the first row another row was placed, making them two barrels high. There was an awning-post in front of the tavern, and near the barrels, up which the seven-year-old son of the plaintiff was climbing and sliding down. While at the top of the post his hands slipped and he fell into the gutter. One of the barrels became dislodged from its place in some way, and, falling on the boy's breast, killed him. His mother brought her action against the city, alleging that as the city prohibited by ordinance the piling of the barrels on the sidewalk it was its duty to have them re-

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moved, and, not having done so, it was liable to the plaintiff for the death of her son. The court held that she had no cause of action; that the boy's death was occasioned exclusively by his own wantonly reckless act of climbing up and sliding down the awning-post, and that his fall was not due to any ordinary use of the sidewalk as a public highway; that the awning-post was a perfectly lawful structure, such as are in use in all parts of the city, and that it would be establishing a rule of liability never yet heard of to hold the city responsible for the consequences of the reckless antics of all the children who chose to make these structures a means of amusement or adventurous exercise; that the presence of the barrels was not the cause of the injury. Gaughan v. The City of Phila., S. C. Penna.

MALICE—GROSS NEGLIGENCE—EXEMPLARY DAMAGES.—In Philadelphia Traction Company v. Orbann, S. C. Penna., February 27, 1888, the facts were as follows: Orbann, who was a newsboy, engaged in selling newspapers, boarded one of the company's cars. The usage of the company was to permit newsboys on their cars without objection. Orbann testified as follows: "There were two cars coupled together, and I jumped on the first one. I hallooed out my papers, and it was pretty near Third street. There was a wagon coming along. I did not want to jump off for fear the wagon would run over me; I stood on the bottom step. People wanted to get on; the conductor shoved me on the arm and turned me round, and I fell between the two cars; I fell on the ground on my side, I think, near the track—between the track and the crossing, I guess. I fell between the two wheels. I was standing like this [indicating] on the bottom of the step, and he pushed me like this [indicating], and I turned right around and fell between the two cars. It was the hind car that ran over me." *Held*, that while in actions against corporations for injuries received through the negligence of their servants exemplary damages may be recovered when the injuries are wanton and malicious or are inflicted in a gross or outrageous manner, whether the act was previously authorized or subsequently ratified by the corporation or not; yet the facts in this case, as narrated by the defendant in error, did not justify the submission to the jury of the question of exemplary damages. Compensation only could be recovered.

Book Notice.

Insanity, its Classification, Diagnosis, and Treatment. By E. C. Spitzka, M. D. Price, $2.75.

A Manual of Medical Jurisprudence, with Special Reference to Diseases and Injuries of the Nervous System. By Allan McLane Hamilton, M. D. Price, $2.75.

We have received from the publisher, E. B. Treat, 771 Broadway, New York, the above recent publications, to which we desire to call the attention of our readers. It is unnecessary to dwell upon the importance of an accurate knowledge of these subjects to legal practitioners. Questions are arising every day in the multifarious concerns of life which involve the mental capacity of the participants in one way or another and which ultimately find their way into the courts for solution. The cases are likewise numerous wherein counsel must elicit from medical experts or medical attendants testimony upon the mental or physical condition of testators, persons receiving injuries, &c., which requires an intimate and somewhat technical knowledge of symptoms in order to properly and clearly present the case to the jury. These works are by eminent New York physicians, and, although not professing to be written as complementary treatises, they may be called companion volumes, not only by reason of their mechanical and external similarity, but also because of the light they throw on each other. We can recommend these volumes as instructive and readable, written with evident care, and nothing asserted that is not fortified by abundance of illustrations. The books are octavo, stoutly and handsomely bound in cloth.

THE COURTS.

Supreme Court of the United States.

April 21.

Isaac H. Ford, of Washington, D. C.; Tilton Davis, of St. Louis, Mo.; W. P. Taulbee, of Salyersville, Ky., and Benjamin Barker, jr., of New York city, were admitted to practice.

206. Kelly and Alexander v. The Mayor, &c., of the Town of Milan. Judgment affirmed with costs.

207. Norton v The Mayor, &c., of the Town of Dyersburg. Judgment affirmed with costs.

1388. The United States v. The State of Louisianna. Appeal from the Court of Claims. Judgment reversed and cause remanded with a direction to enter a judgment in favor of the United States.

148. Blacklock et al. v. Small et al. Decree reversed; costs in this court to be paid by the appellants.

225. Forncrook v. Root. Decree affirmed with costs.

210. The Peoria and Pekin Union R. Co. v. The Chicago, Pekin and Southwestern R. Co. Decree affirmed with costs.

193. Smith v. County Commissioners of Bourbon Co., Kans. Decree dismissing the bill generally reversed.

223. Marye v. The B. and O. R. Co. Decree affirmed with costs.

1384. The United States v. Irwin et al. Judgment reversed and cause remanded.

1385. The United States v. Perry et al. Judgment reversed and cause remanded.

218. The Missouri Pacific R. Co. v. Mackey. Judgment affirmed with costs.

202. The Minn. and St. L. R. Co. v. Herrick. Judgment affirmed with costs.

213. Lawrence et al. v. Merritt. Judgment affirmed with costs.

216. Gleason v. The District of Columbia. Appeal from the Court of Claims. Judgment affirmed.

976. Whitbeck v. The Mercantile Nat. Bank, &c. Decree affirmed with costs.

1386. The United States v. Bailee, &c. Judgment affirmed by a divided court.

1378. The District of Columbia, appellant, v. Wm. C. Murdock.

1379. Wm. C. Murdock, appellant, v. The District of Columbia. Appeals from the Court of Claims. Judgment affirmed by a divided court.

1145. Asher v. The State of Texas. Motion to advance granted.

1414. Francis v. The United States. Motion for a writ of certiorari submitted.

1111. Lent et al. v. Tillson, tax collector, &c. Motion to dismiss or affirm submitted.

1. Downs v. Hubbard, administrator, &c. Argued.

1399. The United States v. Lacher. Argued.

1411. Mahon v. Justice, jailer of Pike County, Kentucky. Argument continued.

Supreme Court of the District of Columbia.

GENERAL TERM.

April 21.

Walker & Simmons v. The District of Columbia. Certain assessments quashed. Opinion by Justice Cox.

Cook v. Trotter. Mandamus denied. Opinion by Chief Justice Bingham.

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IN EQUITY.—New Suits.

April 17.

11113. Nettie Ashton v. Geo. W. Ashton. For divorce. Com. sol., C. Carrington.

11114. Louisa Tudy v. Michael J. Colbert et al. Creditor's bill and to sell part of lot. Com. sol., W. A. Cook.

April 18.

11115. Thaddeus Bean v. Homer Campbell. Specific performance. Com. sol., T. F. Miller.

11116. Augustus W. Daily v. Rachiel Daily. For divorce. Com. sol., H. T. Wiswell.

April 19.

11117. Frederick Housam v. Annie Dwyer. Injunction for conveyance. Com. sol., C. Storrs.

11118. Mattie W. Brown v. David H. P. Brown. For divorce. Com. sol., D. W. Glassie.

11119. Emma Johnson v. John H. Cook et al. Com. sol., F. T. Browning.

April 20.

11120. Mattie S. Whitney v. Chas. C. Duncanson. Injunction to restrain sacrifice of goods and chattels. Com. sols., Morris & Hamilton.

11121. Robert McLean v. John H. Gibson. To enforce mechanic's lien. Com. sols., Newton & Lavender.

11122. Harvey Spalding v. District of Columbia. To declare free of tax lien for taxes assessed prior to Sept. 9, 1875. Com. sol., W. Willoughby.

11123. Same v. Same. To declare exemption from tax lien. Com. sol., Same.

11124. Lena Glyder v. Morris Glyder. For divorce. Com-sol., E. A. Newman.

April 21.

11125. Thomas T. Keane v. Bridget Burns. Specific performance and conveyance. Com. sol., M. J. Colbert.

11126. Sandiford M. Waters v. John H. McDaniel. To enforce mechanic's lien.

11127. Samuel Bruce v. Louisa Bruce. For divorce. Com. sol., E. C. Weaver.

11128. Rosina M. Parnell v. Nannie L. Smith et. al. To foreclose mortgage and to sell part of lot. Com. sols., Edwards & Barnard.

11129. John Fynam v. Mary Brown. To divest and rest title to lot. Com. sols., Brook and Darlington.

CIRCUIT COURT.—New Suits at Law.

April 14.

28591. Wm. L. Lyon et al. v. Elizabeth Riley. Account, $590.16. Plffs attys, Birney & Birney.

58592. Samuel B. Sexton et al. v. Elizabeth Riley et al. Notes and account, $597.38. Plffs attys, Same.

28593. Will A. Johnson v. Louise H. Patterson. Damages, $1,000. Plffs attys, Cook and Cole.

28591. Greenburg Solomon v. Mrs. Sarah Coates. Ejectment. Plffs attys, Same.

April 16.

28595. Hermon A. Seligson v. Samuel Gassenheimer. Notes, $272.85. Plffs atty, E. H. Thomas.

28598. Benj. Githens et al. v. Julius Vogel. Notes, $101.48. Plffs attys, Cole & Cole.

28597. Henreita C. Metzerott v. Wm. F. Marr. Replevin. Plffs atty, W. K. Duhamel.

April 17.

28598. Bennie C. McQuay v. The B. and P. R. R. Co. Damages, $4,950. Plffs attys, Maddox, and Edwards & Barnard.

April 18.

28599. Geo. S. Rhodes et al. v. The Wash. Gas-Light Co. Damages, $20,000. Plffs attys, Carrington, Williamson and Sheppard.

28600. Walter Fernandis, jr., v. Philip M. Snowden et al. Note, $225. Plffs atty, A. C. Bradley.

April 19.

28601. James G. Wilmarth et al. v. John A. Gray et al. Judgment of Justice Harper, $53.31.

PROBATE COURT.—Justice Cox.

April 20.

Estate Robert M. Miller. Letters of administration issued to Ann Miller; bond, $8,000.

Estate John Drill. Letters testamentary issued to Mary Ann Drill; bond, $100.

Estate Amelia M. Green. Letters testamentary issued to Wm. Burris; bond, $500.

Estate Margaret Campbell. Order of publication returnable May 18, 1888.

Martha Jane Wright. Order of reference to examiner.

Estate John A. W. Waters. Will admitted. Letters testamentary issued to Margaret T. Waters; bond, $1,000.

Estate Ellen French. Order granting letters of administration to Wm. Britt; bond, $4,000.

Estate Jonathan Kirkwood. Will filed.

Estate Selby B. Scaggs. Will filed.

Elizabeth C. Wright, guardian. Order approved; bond, $5,000.

Estate Ann Jones. E. J. Turley appointed guardian; bond, $6,000.

Estate Michael R. Combs. Order for partial distribution.

Estate Joseph L. Johnson. Letters testamentary issued to executrix; bond, $400.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Amelia M. Green**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

WM. BURRIS, Ex'r, cor. 7th and F sts. n. w.

17 No. 3021. Ad. D. 14. J. T. Cull, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles H. Wright**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1888.

ELIZABETH C. WRIGHT, Adm'x, 741 11th st. s. e.

17 No. 3055. Ad. D. 14. J. T. Cull, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the case of Julia C. Buker, Executrix of **James W. Buker**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2572. Ad. D. 13. C. P. Conger, 47 Corcoran Building.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 24th, 1888.

In the case of Moses Colman, jr., Administrator of **Henry Colman**, deceased, the Administator aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2652. Ad. D. 13. Leon Tobriner, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Peter Campbell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1888.

T. E. WAGGAMAN, Ex'r, 917 F st. n. w.

17 Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Annie V. Ryder
v.
Margaret E. Diggs et al. } No. 11,017. In Equity.

Benjamin F. Leighton and James H. Smith, Trustees in this cause, having reported a sale of lot twelve (12), in square five hundred and eighty-seven (587), to Dennis Toomey for the sum of twenty-five hundred dollars ($2,500), it is, this 21st day of April, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before Tuesday, the 22d of May next.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the last-mentioned day.

By the Court. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

17 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the matter of the Estate of **Mary Bryerly**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Marvin Eastwood.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of May next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

17 W. P. Bell, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the case of William G. Moore and Daniel McFarlan, Executors of **William W. Moore**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2573. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 18th, 1888.

In the case of Julia C. Jackson, Administratrix of **Jesse W. Jackson**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2681. Ad. D. 13. Charles H. Cragin, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Joseph L. Johnson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

M. F. JOHNSON, Ex'x, 2021 83d st.

17 No. 3058. Ad. D. 14. R. P. Jackson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Middleton Mitchell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of April, 1888.

G. W. RAY, Ex'r, 3275 M st., Washington, D. C.

17 No. 2959. Ad. D. 13. R. P. Jackson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the case of Joseph J. Waters, Administrator of **Joseph J. Nicholson**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and in the Evening Star, of Washington city, D. C., previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.

17 No. 2700. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the matter of the Estate of **Margaret Campbell**, late of the District of Columbia, deceased.

Application for Letters of Administration on the estate of the said deceased has this day been made by Joseph C. Lee, a creditor, who prays that such letters may be granted to Samuel Maddox.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of May next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

17 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 18th, 1888.

In the case of Charles H. Cragin, jr., Executor of **Charles H. Cragin**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2698. Ad. D. 13.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Carrie F. Hunt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1888.

ELBRIDGE J. PATTEE, Adm'r.

17 No. 2924. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Helmick**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1888.

CHARLES B. CAYWOOD, Adm'r, 916 F st. n. w.

17 No. 3056. Ad. D. 14. E. H. Thomas, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Elizabeth Kelly**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1888.

WILLIAM S. BROCK, Adm'r, 940 K st. n. w.

17 No. 3049. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Susan Walker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of March, 1888.

BENJ. BUTTERWORTH, Adm'r c. t. a.,
407 Maple ave., Washington, D. C.

16 No. 2927. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of Minneapolis, Minnesota, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Edward A. Paul**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1888.

AMASA C. PAUL, Adm'r, 321 4½ st. n. w.

16 Wm. Twombly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of April, 1888.

Nora O'Leary et al. v. **Margaret O'Leary et al.** } No. 11,059. Equity Docket 28.

On motion of the plaintiffs, by Mr. Neal T. Murray, their solicitor, it is ordered that the defendants, **Margaret O'Leary, Elizabeth O'Leary, Ellen O'Leary, John O'Leary, Mary O'Leary, and Margaret O'Leary**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition, by sale, of the real estate of which John O'Leary died seized and also of the real estate of which Ellen O'Leary died seized.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

15 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William M. McConvey v. **Thomas Geary, Executor, &c., of James Monaghan.** } No. 10,208. Equity Doc. 26.

This cause being referred to me to state an account of the debts owing by **James Monaghan**, deceased, and distribution of the assets in the hands of the executor, notice is hereby given that I shall proceed to execute the said order of reference on Saturday, the 5th day of May, 1888, at 12 o'clock m., at my office, in the United States Court-House, Washington, D. C., at which time and place all persons may appear and be heard. All creditors of the said James Monaghan are notified to present their claims, with the proofs, on or before the said date.

16 JAS. G. PAYNE, Auditor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of April, 1888.

Edward F. Beale et al. v. **Gertrude Wheeler et al.** } No. 9,937. Equity Docket 25.

James H. Saville, trustee in this cause, having reported a sale of lots 28 and 29, in trustee's subdivision of lot 1, in square 491, and also all the right and title of the parties hereto in and to parts of lots 1 and 24, in same square, lying immediately north of said lots 28 and 29, to George N. Beale, Mary E. Beale, Mary E. Read, and the heirs of Truxtun Beale, deceased, for the sum of $31,000, it is, this 12th day of April, 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of May, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

16 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 10th, 1888.

In the case of William O. Denison, Administrator c. t. a. of **Benjamin Holladay, jr.**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

16 No. 2673. Ad. D. 13. Benjamin F. Leighton, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Young**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1888.

JANE E. YOUNG, Adm'x, 751 8th st. s. e.

16 J. T. Cull, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 13th, 1888.

In the case of William H. Harris, Administrator of **Matilda Madison**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

16 No. 2415. Ad. D. 12.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 3, 1888.

In the matter of the Estate of John L. Miller, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by George M. Jones.

All persons interested are hereby notified to appear in this Court on Friday, the 27th day of April, instant, at 1 o'clock p. m., to show cause why the said Will should not be admitted to Probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
14 Test: DORSEY CLAGETT, Register of Wills.
No. 3034. Ad. D. 14. Chas. E. Fraser, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James O'Leary et al. v. Charles M. O'Leary et al. } Equity No. 11,075. Docket 28.

On motion of the plaintiffs, by their solicitor, Chapin Brown, esq., it is, this 14th day of April, A. D. 1888, ordered that the defendants, James A. Ward, Robert H. Ward, and the Unknown Heirs of Barnard Givenny, cause their appearance to be entered herein on or before the first rule-day occurring forty (40) days after this day; otherwise the cause will be proceeded with as in case of default, the summons heretofore issued in this cause having been returned by the marshal of the Court "Not to be found" as to these above named defendants.

The object of this suit is for the sale, for the purpose of partition, of sub-lots 28 and 29, in square 622, and original lot 10, in square 529, according to the ground plat of the city of Washington, and fully described in the bill filed herein; and also for the release of a deed of trust recorded in liber J. A. S. 72, folio 342 et seq., one of the land records of the District of Columbia.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
16 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 11th, 1888.

In the case of Arabella Spencer, Executrix of Dan A. Spencer, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
16 No. 2647. Ad. D. 13. D. E. Cahill, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Chester Goodrich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1888.

FRANCIS H. SMITH, Adm'r, 1222 F st. n. w.
16 No. 3008. Ad. D. 14. B. F. Leighton, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Ora B. Webb, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1888.

A. B. WEBB, Adm'r.
16 W. Preston Williamson, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of April, 1888.

William H. H. Gorham v. Henry H. Dudley, Jr., et al. } No. 11,079. Equity Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Henry H. Dudley, jr., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee to release a deed of trust from George O. Miller to Henry A. Duncanson and Henry H. Dudley, both deceased, to secure $300 on sub-lot 54, square 361, Washington, D. C., recorded in liber 850, folio 415.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1888.

Catherine Wilson, Guardian, v. Catherine Miller, otherwise known as and called Daisy Miller, et al. } No. 11,073. Docket 28.

On motion of the plaintiff, by Mr. E. A. Newman, her solicitor, it is ordered that the defendants, David W. Miller, Frederick H. Bolenius, Robert M. Bolenius, Frank Graff, and David W. Graff, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell certain real estate in the District of Columbia of the infant defendant, Catherine Miller, alias Daisy Miller, and for investment of proceeds.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of April, 1888.

Ida Forrest et al. v. Abraham Kendick et al. } No. 11,065. Equity Docket 28.

On motion of the plaintiffs, by Mr. B. F. Leighton, their solicitor, it is ordered that the defendants, Martin F. Kendick and Susan F. Kendick, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to sell lot fifty-two (52), in Abraham Kendick's et al. subdivision of lots thirty-eight (38) and thirty-nine (39), in square five hundred and three (503), for the purpose of partition.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louise M. Holl, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1888.

CHARLES W. HOLL, Adm'r, 237 Pa. ave. n. w.
15 Wm. H. Dennis, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Susan Kengla, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of April, 1888.

MARY F. KENGLA, Ex'x,
West Washington, D. C.
15 No. 2998. Ad. D. 13. J. J. Darlington, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Margaret Carter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 8th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 8th day of March, 1888.

MICHAEL J. COLBERT,
EDWIN SUTHERLAND,
Administrators.

15 No. 2806. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1888.

David F. McGowan et al. v. **Nancy Vodery et al.** } No. 11,080. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendants, **The American Tract Society, the Trustees of the Presbyterian Board of Publication and Sabbath-School Work, and the Woman's Benevolent Association**, Washington city, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a construction of the will of Catherine E. Coyle as the certain legacies contained therein.

This order to be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of April, 1888.

Joseph R. Hertford v. **George C. Lewis.** } No. 28,487. Docket 32.

On motion of the plaintiff, by Mr. C. Storrs, his attorney it is ordered that the defendant, **George C. Lewis**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the defendant's goods and chattels, attached on the 28th day of February, A. D. 1888, to the payment of the plaintiff's demands, as set forth in the above-entitled suit.

By the Court. A. B. HAGNER, Asso. Justice.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of April, 1888.

Horace F. Page v. **John F. Dezendorf et al.** } No. 11,062. Equity Docket 28.

On motion of the plaintiff, by Mr. A. J. Willard, his solicitor, it is ordered that the defendant, **James N. Croft**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish and enforce a right of the plaintiff against real and personal property within the jurisdiction of this Court.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ann Jones**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of April, 1888.

15 SAML. C. PALMER, Ex'r, 2424 Pa. ave. n. w.
No. 3015. Ad. D. 14. H. O. & R. Claughton, Proctors.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Joseph Beck**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of April, 1888.

EDWARD BEUCHERT, Adm'r, 727 H st. n. e.

15 Jno. A. Clarke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of April, 1888.

Joseph C. Wood v. **Ada Wood.** } No. 11,077. Equity Docket 28.

On motion of the plaintiff, by Mr. Thomas C. Taylor, his solicitor, it is ordered that the defendant, **Ada Wood**, of the city of Natchez and State of Mississippi, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the ground of adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In re Michael Sheahan, Lunatic. } Equity. No. 10,870.

Mary Sheahan, the trustee appointed in the above-entitled cause, having reported to the Court that she has sold the property described in these proceedings, to wit, the north fourteen (14) feet of lot eight (8) by the depth of said lot, in square five hundred and twenty-nine (529), at private sale, to Julius Patch, for $2,650, it is, by the Court, this 2d day of April, A. D. 1888, ordered, adjudged, and decreed that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 3d day of May, A. D. 1888.

W. S. COX, Justice, &c.
True Copy. Test: R. J. MEIGS, Clerk,
14 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of March, 1888.

Gertrude E. Samo v. **Brooke B. Williams.** } No. 11,028. Docket 28.

On motion of the plaintiff, by Messrs. Gordon & Gordon, her solicitors, it is ordered that the defendants, **Douglass Scott** and **Harriet de Bodisco Scott**, his wife, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud caused by defective acknowledgment of deed in Liber J. A. S. 199, folio 40, of the land records for the District of Columbia, from title of all of lot 113, Beatty and Hawkins' addition to Georgetown, D. C., and part of lot 106 in same addition. Beginning at northeast corner of said lot 106 and running thence south 48 feet 6 inches; thence west 66 feet and 8½ inches; thence north to southwest corner of lot 113 and thence east to the beginning with general right of way over a 15-foot alley, leading from lot 106 to First street.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
14 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Michael Corcoran**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of April, 1888.

MARY A. CORCORAN, Ex'x, 1428 L st. n. w.

15 No. 3033. Ad. D. 14. Neal T. Murray, Proctor.

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VOL. XVI. - - - - - - - No. 18

WASHINGTON, D. C. - - - - - MAY 2, 1888

THE case of Mary Holland v. Henry Alcock, recently decided by the New York Court of Appeals and published in full in the New York *Daily Register* April 21, involved the validity of a bequest to a testator's executors to be applied by them for the purpose of having prayers offered in a Roman Catholic Church, to be by them selected, for the repose of the testator's soul and the souls of his family and also the souls of all others in purgatory.

The English doctrine is that a trust of this character is void, as being for superstitious purposes; but the doctrine in New York, as conceded in the opinion of the court in this case, is otherwise and that the *purpose* of the trust is valid. The court held the trust invalid, however, on the ground that there was no definite designation of a beneficiary.

The reasoning of Judge Rapallo, who delivered the opinion, is altogether artificial; and, while the decision may be, and probably is, correct, as in line with precedents, themselves established upon reasoning of a purely technical character, yet at the same time a contrary decision would have been more in harmony with the decided tendency of courts to give effect to a testator's intentions as expressed in his will, and might easily have been sustained under the ruling of Power v. Cassidy, 79 N. Y., 602.

In the principal case the court thought there was no beneficiary entitled to demand the enforcement of the trust, and that a mere nominal trust, in the performance of which no ascertainable person has any interest, and which is to be performed or not, as the person to whom the money is given thinks fit, has always been held invalid. In Power v. Cassidy the bequest was of a fund to the executors in trust, to be divided by them among such Roman Catholic charities, institutions, schools or charities, in the city of New York, as a majority of the executors should decide and in such proportions as they might think proper. The court considered this a valid trust, yet apparently the want of a definite beneficiary to enforce the trust is as patent in kind if not in degree as in Holland v. Alcock.

The purpose of the trust being valid and legal, the court might as readily have considered the existence of a beneficiary equitably entitled to enforce the trust as in the case of Power v. Cassidy, and especially as there was in the case under review no refusal upon the trustees' part to carry out the terms of the bequest and elect a beneficiary. The purpose of the bequest being legal, and that purpose having been clearly expressed, the trustees not having refused to designate a beneficiary, and the court having had a case as strong as Power v. Cassidy as a precedent, it is to be wondered at that it did not take the next firm step in the direction of equitable interpretation instead of invoking a technical objection for the overthrow of the testator's design.

The case is an interesting one, as the opinion not only reviews the previous cases in New York upon the same subject, but reviews also the history of charitable uses in England. Space alone forbids its publication in full in this journal.

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

THE UNITED STATES, Appellant,
v.
ASHER C. BAKER.

Decided April 16, 1888.

In calculating the time of service of officers of the Navy under the provision of the act of March 3, 1883, which entitles those claiming longevity pay to "be credited with the actual time they may have served as officers or enlisted men . . . as if all said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service," time spent at the Naval Academy as a midshipman prior to the act of July 15, 1870, and as a cadet midshipman subsequent thereto, must be included.

Mr. Justice BLATCHFORD delivered the opinion of the court.

This is an appeal by the United States from a judgment of the Court of Claims, awarding to the claimant $836.71, on the following facts:

On the 30th of September, 1867, the claimant was appointed a midshipman in the Navy, by a form of appointment which stated that he was "appointed to the grade of midshipman in the United States Navy." By section 12 of the act of July 15, 1870, chapter 295 (16 Stat., 334), it was provided that "the students in the Naval Academy shall hereafter be styled cadet midshipmen;" and that, "when cadet midshipmen shall have passed successfully the graduating examination at said academy, they shall receive appointments as midshipmen, ranking according to merit, and may be promoted to the grade of ensign as vacancies in the number allowed by law in that grade may occur." After the passage of that act the form of appointment was changed by striking out the words "appointed to the grade of midshipman" and inserting the

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words "appointed a cadet midshipman;" but no appointment in the amended form was issued to the claimant. After completing his academic course at Annapolis the claimant was, on the 14th of July, 1872, promoted to the grade of ensign; on the 6th of December, 1876, to that of master; and on the 10th of January, 1884, to that of lieutenant, in which grade he was serving when his petition was filed.

By the act of March 3, 1883, chapter 97 (22 Stat., 473), it was provided as follows: "And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service." The claimant alleged in his petition that the lowest grade having graduated pay held by him since last entering the service was, under the act of July 15, 1870, chapter 295 (16 Stat., 330, sec. 3), now section 1556 of the Revised Statutes, that of ensign, and that he was, under the act of 1883, entitled to have credit given to him upon his grade of ensign for all of his service prior to the date of his commission as ensign, namely, four years, nine months, and fourteen days, from September 30, 1867, to July 14, 1872, which included all of the time of his service as midshipman. The question is as to whether he is entitled to the difference of pay resulting from such credit. The Court of Claims decided in his favor, awarding to him for that pay the sum of $836.71.

The single question involved is whether the claimant, while he was a midshipman, was serving as an officer or enlisted man in the Navy, within the meaning of the act of 1883. The contention on the part of the United States is that the claimant, while a student at the Naval Academy, did not, in the sense of the act of 1883, serve either as an officer or an enlisted man; and that, in that view, it is immaterial whether, as a student, he is or is not to be regarded as an officer of the Navy. It is denied by the United States that the entry of a pupil into the academy is his entry into the naval service, and that the period of his pupilage is actual service, within the meaning of the act of 1883; and it is argued that he does not enter into actual service until he is appointed either in the line of the Navy, the Marine Corps, or the Engineer Corps; that, as a student, he does not serve, but is preparing to serve; that he does not render service to the Government, but is receiving favors from it; that he can only commence service after his graduation, such service depending upon his graduating merit; and that the compensation of $500 a year given to him is not a payment for service rendered, but is a gratuity and an allowance made to him for his support in his preparation for service to be rendered.

When the claimant was appointed a midshipman in the Navy, on the 30th of Septembr, 1867, the act of July 16, 1862, chapter 183 (12 Stat., 583), was in force. The first section of that act divides the active list of line officers of the Navy into nine grades, the first of which is "rear admirals," the eighth of which is "ensigns," and the ninth of which is "midshipmen." The eleventh section of that act provides that the students at the Naval Academy shall be styled midshipmen until their final graduating examination, when, if successful, they shall be commissioned ensigns, ranking according to merit. Thus section 1 of that act creates the grade of midshipman as one of the nine grades of the active list of line officers of the Navy, and section 11 declares that the students at the Naval Academy shall be styled midshipmen. If these statutory provisions were not varied as respects the claimant prior to July 14, 1872, when he was promoted to the grade of ensign, he was all the time an officer in the line of the Navy and serving as such officer.

Section 12 of the act of July 15, 1870, chapter 295 (16 Stat., 334), provides that the "students in the Naval Academy shall hereafter be styled cadet midshipmen," and that when they "shall have passed successfully the graduating examination at said academy they shall receive appointments as midshipmen, ranking according to merit, and may be promoted to the grade of ensign as vacancies in the number allowed by law in that grade may occur." The provisions of that section do not seem to have been applied to the case of the claimant. He did not thereafter receive an appointment as cadet midshipman, nor does he appear to have received an appointment as midshipman after he passed successfully the graduating examination at the academy, but he was promoted to the grade of ensign after he had completed his academic course at Annapolis.

It is very questionable whether the twelfth section of the act of 1870 applies to persons who had been theretofore appointed midshipmen. It would rather seem to be limited in its provisions to persons thereafter to be appointed to the distinct grade of cadet midshipmen, and therefore not to include the case of the claimant. But, even if section 12 of the act of 1870 applies so far to those who were then students in the Naval Academy, that they were thereafter to be styled cadet midshipmen, yet they were still to discharge the same duties as before and be subject to the same naval discipline and control as before and to receive the same pay as before. We see nothing in the act of 1870 to exclude the claimant from the position which he occupied prior to the passage of that act, as a member of a grade in the active list of line officers of the Navy, so far as respected his service at the Naval Academy after the date of the passage of that act, whether he was thereafter to be styled a cadet midshipman or to continue to be styled a midshipman.

No legislation which took place after the 14th of July, 1872, can affect the question arising under the act of 1883 as to his service as an officer in the Navy prior to the 14th of July, 1872. Section 15 of the act of 1862 provided that the "annual pay of the several ranks and grades of officers of the Navy on the active list," thereinafter named, comprehending the nine grades mentioned in the first section of the same act, should be as thereinafter specified in the fifteenth section, and the last provision was this: "Midshipmen shall receive $500."

It is impossible not to conclude that the claimant continued to be, after the passage of the act

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of 1870, as he was prior to its passage, an officer of the Navy, on the active list, and serving as such an officer, by virtue of his having been appointed a midshipman and continuing to be a student in the Naval Academy, even though he might have been properly styled, after the passage of the act of 1870, a cadet midshipman.

The judgment of the Court of Claims is affirmed.

JULIA A. NUTT, Executrix of Haller Nutt,
v.
THE UNITED STATES.

Decided April 16, 1888.

August 7, 1882, Congress directed the Quartermaster-General to examine and adjust claimant's claims against the United States. December, 1882, he reported to Congress, through the Secretary of War, a certain sum to be due. The account was not transmitted to nor acted upon by the accounting officers of the Treasury. July 5, 1884, an act was passed "for the allowance of certain claims reported by the accounting officers of the Treasury." Among these was one to claimant, which was but a fraction of amount reported as due by Quartermaster-General. Claimant accepted this amount from Secretary of the Treasury. *Held*, that the report of the Quartermaster-General was neither the award of an arbitrator nor the equivalent of an account stated so as to legally bind the United States for the amount reported to be due; nor was the appropriation by Congress of a smaller sum any recognition by them that a larger sum was due.

Mr. Justice MATTHEWS delivered the opinion of the court.

An act of Congress, approved August 7, 1882, for the relief of Julia A. Nutt, widow and executrix of Haller Nutt, deceased (22 Stats., 734), declared—

"That the Quartermaster-General of the United States is hereby authorized and directed to examine and adjust the claims of Julia A. Nutt, widow and executrix of Haller Nutt, deceased, late of Natchez, in the State of Mississippi, growing out of the occupation and use by the United States Army, during the late rebellion, of the property of the said Haller Nutt during his lifetime, or of his estate after his decease, including live-stock, goods, and moneys taken and used by the United States or the armies thereof; and he may consider the evidence heretofore taken on said claim, so far as applicable, before the commissioners of claims, and such other legal evidence as may be adduced before him in behalf of the legal representatives of Haller Nutt, deceased, or in behalf of the United States, and shall report the facts to Congress, to be considered with other claims reported by the Quartermaster-General: *Provided*, That no part of said claims, upon which said commissioners of claims have passed on the merits, shall be considered by the Quartermaster-General."

On December 22, 1882, the Quartermaster-General, acting under and pursuant to this act, reported to Congress, through the Secretary of War, that he had examined the claims of Mrs. Julia A. Nutt, as widow and executrix, and the nature and manner of his investigation, and the circumstances and evidence relating to the same. He further reported as follows:

"All the evidence considered, as well as the additional information I have been able to gather, warrants me in recommending that Julia A. Nutt be paid the following items, which, in my judgment, are sufficiently proved by the evidence, viz."

He then states various items of property, with their value, the total amounting to $256,881.05. This report was transmitted direct by the Secretary of War to Congress, but was not transmitted to or acted upon by the accounting officers of the Treasury. On July 5, 1884, Congress passed an act (23 Stats., 552) "for the allowance of certain claims reported by the accounting officers of the United States Treasury Department, and for other purposes." This statute enacts—

"That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any money in the Treasury not otherwise appropriated, to the several persons in this act named, the several sums mentioned herein, the same being in full for, and the receipt of the same to be taken and accepted in each case as a full and final discharge of the several claims examined and allowed by the proper accounting officers under the provisions of the act of July 4, 1864, since January 6, 1883, namely."

Then follows a list of the names of the persons, with the amount payable to each, under the head of the several States of Tennessee, Kentucky, West Virginia, Indiana, Pennsylvania, Ohio, Maryland, Missouri, District of Columbia, Colorado, Illinois, Indian Territory, Iowa, Kansas, and, finally, under the head of Mississippi, as follows: "To Julia A. Nutt, widow and executrix of Haller Nutt, deceased, of Adams County, the sum of $35,556.17."

This amount was paid to and accepted by the claimant. The payment and receipt of this sum under the act of July 5, 1884, however, it is contended, does not operate as a full and final discharge of her claim against the Government, because it is not within the description contained in the act of "claims examined and allowed by the proper accounting officers under the provisions of the act of July 4, 1864." The right to recover the full amount of the claim, after deducting this payment, is rested by counsel for the claimant upon the act of August 7, 1882, and is based upon the following propositions:

First. The reference of the claim by Congress, with the consent of the claimant, to the Quartermaster-General constituted, under the special provisions of the act of reference, a submission to arbitration, and the Quartermaster-General's conclusion or finding was an award pursuant to arbitration, upon which suit can be maintained.

Second. If the reference to the Quartermaster-General and the finding by him do not constitute an arbitration and award, they are at least the equivalent of an account stated between private individuals.

Third. Even if of itself the finding of the Quartermaster-General did not constitute an account stated it became such by its acceptance by Congress and the appellant.

There is nothing, however, in the language of

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the act of August 2, 1882, to justify the inference that the finding reported by the Quartermaster-General is an award in pursuance of an arbitration. On the contrary, the terms of the act distinctly negative that idea. There is no recital of a mutual submission by the parties of any controversy to an arbitrator. The Quartermaster-General was authorized and directed by Congress to examine and adjust the claims in question, but not for the purpose of settling and adjudging any controversy in relation thereto between the United States and the claimant. He was required to report the facts to Congress, not to publish an award to the parties; and the object for which his report was required was that the claim should be "considered with other claims reported by the Quartermaster-General." This report evidently is purely for the information of Congress itself, in order that it, being thus advised, might thereafter deal with the claim as in its judgment should seem best.

On this point the language of this court in Gordon v. United States, 7 Wall., 188, 195, is applicable. It was there said: "The various acts and resolutions of Congress in this case emanated from a desire to do justice and to obtain the proper information as a basis of action, and were not intended to be submissions to the arbitrament of the accounting officer. They were designed as instructions to the officer by which to adjust the accounts, Congress reserving to itself the power to approve, reject, or rescind, or to otherwise act in the premises as the exigencies of the case might require. In other words, these references only require the officer to act in a ministerial, not a judicial capacity."

To the same effect is the case of Chorpenning v. United States, 94 U. S., 397, 398. It was there said: "The resolution relied upon by the appellant was wholly unilateral. It contained no stipulation of payment, express or implied. Congress, for its own reasons, simply directed an examination and adjustment. It gave no promise and came under no obligation to the other party and asked and received none from him. The Government and the claimant stood and continued to stand wholly independent of each other. The Government could at any time before payment recall what it had done, and the claimant was at liberty up to the same period to refuse concurrence and assert *aliunde* his legal rights, if any he had. Prior to that time there could be no vested right and no commitment of either party, not subject to the exercise thereafter of such discretion, affirmative or negative, as might be deemed proper. The case presents the same legal aspect as if it were between individuals. If a merchant should direct his clerk or other agent to investigate and adjust the claim of a third party upon a prescribed basis, and the adjustment was made accordingly, can it be doubted that the merchant might thereafter, because he had come to the conclusion that the claim was tainted with fraud, or had been already fully paid, or for any other reason, or as a matter of choice, without assigning any reason, decline to recognize what had been done as of any validity, and withdraw the authority under which the proceeding had been taken? The reason of the right would be that there was no binding mutuality of assent, no consideration, and hence no legal obligation resting upon either party."

The same reasons dispose of the second proposition, and show that the report of the Quartermaster-General is no more an account stated between the parties than it is an arbitration and award. In order to constitute an account stated between individuals the statement of the account must be adopted by one party and submitted as correct to the other. But here Congress did not adopt the report of the Quartermaster-General as its statement of what was due from the United States; nor was the report submitted to the claimant as a correct statement of indebtedness.

The acceptance by Congress and the appellant, referred to in the third proposition, can only mean the appropriation made by Congress in the act of July 5, 1884, but certainly that cannot be considered an adoption of the report of the Quartermaster-General. It does not purport to be an appropriation of a partial payment, as a credit upon a larger sum admitted to be due. Even though it be admitted that the language of the act in its first clause, declaring that the receipt of the money appropriated in each case shall be taken as a full and final discharge of the several claims, does not apply, yet there is no inference that the appropriation actually made was intended to be a recognition of a larger amount in fact due. The presumption is the other way; and the right conclusion is that Congress appropriated all that it meant to acknowledge.

The judgment of the Court of Claims dismissing the petition is therefore affirmed.

UNITED STATES COURT OF CLAIMS.

—

JAMES M. T. GLEESON
v.
THE UNITED STATES.

Where a statute authorizes the head of a department to appoint clerks at a salary of not more than a given amount each it impliedly authorizes him to discharge and replace said clerks at discretion, and therefore gives him the right to reduce salaries without the formality of discharging and reappointing.

The following is a sufficient statement of the case for a proper understanding of the decision. On the 15th day of November, 1871, the claimant was appointed by the Postmaster-General a railway-postal clerk at a salary of $1,400 per annum and served in said capacity until May 23, 1883. From the 1st day of August, 1876, to the 31st day of July, 1882, his salary was reduced from $1,400 to $1,300, and on the 12th day of June, 1879, a further reduction was made for one month from $1,300 to $1,240 per annum, the total of such deductions being $597.84.

Section 4025 of the Revised Statutes provides that—

"The Postmaster-General may appoint clerks for the purpose of assorting and distributing the mail in railway post-offices, each of whom shall be paid, out of the appropriation for the transportation of mail, a salary at the rate of not more than $1,400 a year each to the head clerks nor more than $1,200 a year to each of the other clerks."

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After stating the case as above, the court, by WELDON, J., proceeded as follows:

. . . . . .

"The point is made in behalf of the claimant that the salary being once fixed and established, the Postmaster-General had no power to reduce or change it in his discretion. If the power exists in the Postmaster-General to fix the salary it is a continuing power and does not become exhausted by the exercise of it by the first designation. It is true that there are certain powers given to public officers or individuals which become exhausted when once exercised, but the power in this case, if it exists, does not belong to that character.

"If the compensation, not to exceed a certain amount, is in the control and discretion of the Postmaster-General, that control and discretion is not to be taken away by once exercising the power of designation. In the case of McBlair and Runkle (19 Ct. Cls., 397, 528) this court held that the President in the exercise of a certain power in relation to officers on the retired list of the Army became *functus officio;* but those decisions are placed upon the distinction of a continuing power and one intended to accomplish a definite and individual result.

"The right to appoint and discharge at discretion gave to the officer practical control of the power of designation of the amount of salary, and he would not be estopped by the fact that he once designated the salary at a given sum.

"If the Postmaster-General had, under the law, the right to fix the salary at a sum not exceeding $1,400 and the power to appoint and discharge, the law would not require him to discharge and reappoint in order to designate the salary anew.

"What can be done indirectly may ordinarily be done directly in the performance of a public duty

"The statute confers on the officer the right to appoint clerks 'at the rate of not more than $1,400 a year.' The services of clerks in the postal service are as dissimilar in the amount of labor performed and responsibility incurred as the different routes differ in importance in the mail service to be performed.

"If a discretion was given to the Postmaster-General to vary the compensation so as to suit the different degrees and responsibility of labor incident to different routes, or incident to a changed condition in the same routes, it would not have been an unwise policy of the law.

"The words 'not more than one thousand four hundred dollars' become important because of the diversity of service which may be rendered by persons in the postal service. If the labor was uniform in its amount no good reason would exist for a diversity of compensation; but such is not the fact." . . .

SETTLEMENTS relative to captured or abandoned property, made by the Secretary of the Treasury with one of his agents, will not be disturbed, in the absence of fraud, positive violation of the statute, or contravention of public policy, on mere technicalities, especially when the agent's remedy is barred by lapse of time. United States v. Johnson, U. S. S. C., Jan. 9, 1888; 8 S. C. Rep., 446.

Supreme Court of the District of Columbia.

GENERAL TERM.

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REPORTED BY FRANKLIN H. MACKEY.

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LINDEN KENT and JAMES LOWNDES, Administrators, v. THE PENNSYLVANIA RAILROAD COMPANY ET AL.

No. 26,737. LAW DOC. 31.

Decided March 19, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

The mere fact that suit has been brought against a party by the administrators gives him no such interest in the estate as entitles him to have the letters of administration revoked on the ground that they were illegally granted. If the court had no jurisdiction to grant the letters, that may be set up in the action itself as matter of defense, since, in such case, the plaintiffs will have no legal capacity to sue.

STATEMENT OF THE CASE.

On the 19th of February, 1885, John T. Franey, a railway-postal clerk, was serving in that capacity on a postal car attached to a train of the Alexandria and Washington Railroad, a road in which all the defendants were alleged to be jointly interested. The train collided with another at a place called Four-Mile Run, in the State of Virginia. In this collision the postal car was demolished and Franey so severely injured as to cause his death a few days afterward. By the law of the State of Virginia—

"Whenever the death of a person shall be caused by the wrongful act, neglect, or default of any person or corporation, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured, or, if she be a married woman, her husband, either separately or together with her, to maintain an action and recover damages in respect thereof—then, and in every such case, the person who or corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony; provided that in no case shall the recovery exceed $10,000.

"Every such action shall be brought by and in the name of the personal representatives of such deceased person, and within twelve calendar months after his or her death. The jury in any such action may award such damages as to it may seem fair and just, and may direct in what proportion they shall be distributed to the wife, husband, parent, and child of the deceased.

The amount recovered in any such action shall, after the payment of costs and reasonable attorneys' fees, be paid to the wife, husband, parent, and child of the deceased in such proportion as the jury may have directed, or, if they have not directed, according to the statute of distribution, and shall be free from all debts and liabilities of the deceased; but if there be no

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wife, husband, parent, or child the amount so received shall be assets in the hands of the personal representatives, to be disposed of according to law."

In January, 1886, Martha Franey, the widow of the deceased, filed a petition in this court, holding a special term for Orphans' Court business, in which she alleged in substance as follows:

That she is a resident of the county of Fauquier, in the State of Virginia; that she is the widow of said John T. Franey, who died intestate on the 21st of February, 1885, leaving nine infant children [naming them]; that at the date of his death he was a citizen of Virginia and resided in the county of Fauquier, in said State; that, saving a few articles of household furniture, he left no property and had no creditors; that she is a citizen of the United States and resided in said county of Fauquier; that she has a claim against a railroad corporation or corporations within the District of Columbia for causing her husband's death; that she is advised that letters of administration in the premises are necessary and that she is entitled to have them issued to her; that she waives her right in favor of Linden Kent and ——— ———, of the city of Washington, in the District of Columbia, and she hereby consents and requests that letters of administration issue to them.

Letters of administration on the estate of the deceased were accordingly granted to Linden Kent and James Lowndes.

On June 28, 1887, the Baltimore and Potomac Railroad Company filed its petition in the same court, setting forth the filing of the foregoing petition and the issuing of said letters to Kent and Lowndes, and that by virtue of said letters the said administrators had instituted an action at law in this court against the petitioner and several other railroad corporations to recover damages, by virtue and upon the authority of an act of the Legislative Assembly of the State of Virginia, because of the death of the said intestate. A copy of the declaration in said cause, setting forth the said act in full, is filed with this petition.

That the petitioner is informed and believes, and therefore avers, that the said John T. Franey never resided in the District of Columbia, and that no assets belonging to his estate have ever been in the District of Columbia, either before or since his death, and that the sole basis for the claim to letters of administration consisted in said unliquidated claim for damages; and, further, that the said Franey, at the time of his death, and a long time prior thereto, was a citizen of the State of Virginia, and that his sole residence was in the said Warrenton, in the said State, and that all the personal property owned or held by him, or which he had any interest in, was in the State of Virginia.

"Your petitioner is advised by counsel, and therefore submits that this court is without authority or jurisdiction to issue the said letters of administration, and that they are therefore null and void, and that, because the same were issued ill-advisedly, they ought to be, and your petitioner has a right to demand that they shall be, revoked."

The said action at law is number 26,737 on the docket of this court and is still pending; that an issue of law was raised therein which has since been decided, but no plea of any kind by this petitioner, or by any of the other defendants therein, has yet been interposed.

"The petitioner therefore prays—

"First. That the said Linden Kent and James Lowndes may be cited to answer this petition within a reasonable time;

"Second. That the said letters of administration, so as aforesaid issued, may be revoked and declared to be null and void; and

"Third. That the petitioner may have such other and additional relief as may be proper in the premises."

A citation having accordingly issued to the administrators, they filed their answer, setting forth—

"That their claim for administration on said estate and the letters issued thereon were based upon the claim or demand against the said several railroad companies set out as an exhibit; that service of process was duly had on the said defendant corporation, who appeared by counsel and demurred. That the demurrer was overruled by the Supreme Court of the District of Columbia, holding a special term, and leave given to the defendants to plead thereto within twenty days. They referred to the said declaration as setting forth specifically the nature and character of said existing claim as the basis of said administration, which, under the statute, in accordance with the decision of the Supreme Court of the District of Columbia, sets forth the proper cause of action and right to recover against the said defendants."

The matter of this petition and the answer thereto then came on for hearing, and the prayers of the petitioning company were denied, from which order the company appealed to the General Term.

ENOCH TOTTEN for petitioner (appellant).

LINDEN KENT for administrators (appellees).

Mr. Chief Justice BINGHAM delivered the opinion of the court.

The petitioner is not a party having such an interest in the estate of John Franey as entitles it to resist the granting of letters of administration thereon. It has an interest in the question whether or not his administrators may maintain a suit against it, and that is all. In every other way it is a stranger to the estate. No one has a right to question the propriety of the issuing of letters of administration unless he shows an interest in the estate of the deceased, and it is clear that the petitioner has no such interest. It is neither creditor nor legatee, and it is not even certain that it is a debtor of the estate until the result of the suit now pending against it shall determine that fact. The question whether the plaintiffs in that suit have the legal capacity to maintain their action is one which can be fully determined in the action itself. If it should be there held that the Orphans' Court had no jurisdiction to grant the plaintiffs letters of administration the action, of course, will fail, since the plaintiffs will have no legal capacity to maintain it. It is therefore unnecessary, and, indeed, it would be improper, for us to decide that question in this proceeding.

The ruling of the Orphans' Court is affirmed.

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SUPREME COURT OF OHIO.

LEMMON v. BEEMAN.

Decided January 10, 1888.

An infant may, before or on arriving at age, disaffirm a purchase of personalty, other than necessaries, made by him during his minority and recover back the consideration paid without restoring the property sold and delivered to him, where it has been taken from him, whether rightfully or not, upon an execution against a third person. In such a case he is not required, as a condition of his right to recover, to take any steps to recover the property taken from him. It is sufficient in such case that the property ceases to be in his possession or subject to his control.

Judge MINSHALL delivered the opinion of the court.

In 1881 Beeman, then a minor, purchased of James Lemmon, then in life, but since deceased, a certain stock of drugs, for which he paid at the time $400, the price as agreed on between them. The stock was in a store in the State of Illinois, and the sale was made by Lemmon through his agent, Dr. Everett, who some time before had sold the stock to Lemmon, and as his agent had continued in possession of the property and conducted the business for him. In a short time after the sale had been made to Beeman the goods were taken from him under an execution issued upon a judgment against Everett, upon the claim of the creditor of the latter that they belonged to him and not to Lemmon. Beeman made an effort to recover the property, and, in a short time after he became of age (which was in 1882), disaffirmed the contract, presented a claim to the administrator of Lemmon's estate for the money he had paid on the purchase and demanded its return, which was refused and the claim rejected.

No point is made as to the ownership of the goods. It is averred in the petition, and must be taken as the fact, that they belonged to the deceased at the time of the sale to Beeman. Again, there is no room for a claim, nor is it made, that the property purchased was in the nature of necessaries, and the contract, for such reason, incapable of being disaffirmed; nor is it claimed that the decedent or his agent was in any way deceived as to the age of Beeman at the time the sale was made. The only question presented upon the record is whether, upon the facts as stated, the minor had the right, on becoming of age, to rescind the contract and recover the consideration he had paid without returning the property that had been sold and delivered to him.

The true doctrine now seems to be that the contract of an infant is in no case absolutely void. 1 Pars. Cont., 295, 328; Pollock, Cont., 36; Harner v. Dipple, 31 Ohio St., 72; Williams v. Moor, 11 Mees. & W., 256.

An infant may, as a general rule, disaffirm any contract into which he has entered; but until he does so the contract may be said to subsist, capable of being made absolute by affirmance or void by disaffirmance on his arriving at age. In other words, infancy confers a privilege rather than imposes a disability; hence the disaffirmance of a contract by an infant in the exercise of a right similar to that of rescission in the case of an adult, the ground being minority, independent of questions of fraud or mistake. But in all else the general doctrine of rescission is departed from no farther than is necessary to preserve the grounds upon which the privilege is allowed and is governed by the maxim that infancy is a shield and not a sword. He is not in all cases, as is an adult, required to restore the opposite party to his former condition; for if he has lost or squandered the property received by him in the transaction that he rescinds, and is so unable to restore it, he may still disaffirm the contract and recover back the consideration paid by him without making restitution; for if it were otherwise his privilege would be of little avail as a shield against the inexperience and improvidence of youth. But when the property rescinded by him from the adult is in his possession or under his control to permit him to rescind without returning it or offering to do so would be to permit him to use his privilege as a sword rather than as a shield.

This view is supported not only by reason but by the greater weight of authority. It was recognized and applied by this court in Cresinger v. Welch, 15 Ohio, 156, decided in 1846. The following is the language used by Mr. Tyler on the subject:

"If the contract has been executed by the adult, and the infant has the property or consideration received at the time he attains full age, and he then repudiates the transaction, he must return such property or consideration, or its equivalent, to the adult party. If, however, the infant has wasted or squandered the property or consideration received during infancy, and on coming of age repudiates the transaction, the adult party is remediless."

He then adds that "there are expressions of judges and tort-writers against this latter proposition, but," he says, "the weight of authority is in harmony with it, and is decidedly in accord with the general principles of law for the protection of infants." Tyler, Inf., 2d ed., 80, and cases cited by the author. See also the case of Price v. Furman, 27 Vt., 268, and the notes thereto of Mr. Ewell in his Leading Cases on Infancy and Coverture, 119. After an exhaustive review of the cases, this author says:

"The true doctrine, and the one supported by the weight of authority (at least in the United States), would seem to be that, when an infant disaffirms his executed contract after arriving at age, and seeks a recovery of consideration moving from him, and where the specific consideration received by him remains in his hands, *in specie*, at the time of disaffirmance, and is capable of return, it must be returned by him; but if he has, during infancy, wasted, sold, or otherwise disposed of, or ceased to possess, the consideration, and has none of it in his hands in kind on arriving at majority, he is not liable therefor, and may disaffirm without tendering or accounting for such consideration."

This statement of the law, supported, as it is, not only by the greater weight of authority, but also of reason, meets with our full approval. There is, however, much conflict in the decisions of the different States—greater perhaps than upon any other question connected with the law of infancy (Met. Cont., 76); but we

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deem it unnecessary to attempt to review or discuss them, for the very good reason that it has been done with thoroughness and ability by the authors just referred to. See also the notes of Mr. Ewell to the recent case of Adams v. Beall, decided by the Maryland Court of Appeals, 26 Am. L. Reg., 710.

We have been cited by counsel for the defendant below to a number of the previous decisions of this court, supposed to affect the right of the plaintiff to recover; but a careful examination will disclose that such is not the case. In Starr v. Wright, 20 Ohio St., 97, a conveyance had been made by a father to his minor son, it being without any consideration, and intended to defraud creditors; and, during minority, the son had reconveyed to the father to enable him to raise money and pay his creditors, who, for a full consideration, then conveyed to the defendant. The court denied the right of the son on arriving at age to disaffirm his deed of reconveyance. Being the voluntary grantee of his father, the son had done no more than was his moral duty to do, and what he might have been compelled to do, in favor of creditors and purchasers. The court applied the maxim that infancy is a shield and not a sword. The case is quite analogous in principle to the leading one of Zouch v. Pearson, decided by Lord Mansfield in 1765. It was there held that where an infant does what he might have been compelled by a court of equity to do he cannot afterward disaffirm his act. 3 Burr, 1794.

In Harner v. Dipple, 31 Ohio St., 72, the question was whether an undertaking executed by an infant for stay of execution was void or only voidable. The court held that it was voidable only, and might therefore be, as it had been, affirmed by the infant in arriving at age. In Curtis v. McDougal, 26 Ohio St., 67, it appears an infant had purchased a team of mules, and at the same time had executed a mortgage on them to secure the purchase-money. He afterward sold the property to his father, who brought an action in replevin against an assignee of the mortgage to recover possession. The claim was based on the theory that, by the subsequent sale of the mortgaged property, the infant had disaffirmed the mortgage, as he would have had a right to do so. It is difficlt to see how the sale of the property purchased could be treated as a disaffirmance of the contract by which he had acquired it; it was rather an affirmance than a disaffirmance of that contract, and entirely consistent with the existence of the mortgage that he had given to secure the payment of the purchase-money.

Again, there was no positive disaffirmance by the infant, the claim being made by a third person, his grantee, although the rule is well settled that the privilege is personal to the infant, and is not available to third persons. 1 Pars. Cont., 329. But the court placed its decision upon the broader ground that it was not within the privilege of the infant to disaffirm the security he had given for the purchase-money, without also avoiding the purchase, saying that, "in such case, if the infant would rescind a part he must rescind the whole contract, and thereby restore to the vendor the title acquired by the purchase"—again applying the principle that infancy may be used as a shield, but not as a sword. So that the claim of the plaintiff in replevin defeated his right to recover, as a disaffirmance of the mortgage would necessarily have divested the title by which he claimed the property.

It is apparent that none of these, when rightly considered, affect the right of the plaintiff to disaffirm the purchase made of the decedent and to recover the consideration paid. Neither he nor any one claiming under him makes any claim to the property purchased. By his disaffirmance the title has been restored to the estate of the vendor, and the property, or its value, may be recovered by the administrator if it was wrongfully taken by the sheriff under the execution against Everett.

Judgment affirmed.

The Right of Spectators to Witness Pugilistic Encounters.

The London *Law Journal* maintains the right of spectators to look on at pugilistic encounters. "Every Englishman," it observes, "in his heart loves a fight with fists, and the only difference between the Englishman of to-day and the Englishman twenty years ago is that it is now his fashion to pretend the contrary. On a certain day in the present week he was to be seen furtively exchanging the *Times*, in which had, in his younger days, appeared the historic account of the great battle of Heenan and Sayers, written by the late Mr. Tom Taylor, for the *Telegraph*, which, in this matter, better felt the national pulse.

"Perhaps he will have more courage in his opinions if he be told that the right to look on at a fight is deeply imbedded in English law, and has recently been recognized by a preponderance of eight judges over three in Coney's case. A boxing match with gloves is no doubt lawful in all respects, and, although it is as unlawful to fight for money as it is to fight for spite, and unlawful to hold a sponge or take any other prominent part in a fight, yet merely to look on is the inalienable privilege of every Englishman."

Current Articles in the Magazines.

The Effect of the Norman Conquest on English Law. Ernest Freund: *Columbia Law Times*. April, 1888.

The History of Assumpsit. F. B. Ames, Harvard: *Law Review*. April, 1888.

The Principle of Lumley v. Gye and its Application. Wm. Schofield: *Ibid.*

The Right to Follow Trust Property when Confused with other Property. Samuel Williston: *Ibid.*

Memoranda to Refresh Recollection of Witnesses. Seymour D. Thompson: *Central Law Journal*, vol. 26, No. 13.

Implied Revocation of Wills. W. F. Elliot: *Central Law Journal*, vol. 26, p. 387.

Consideration in Deeds. Richard M. Venable: *Maryland Law Journal*. April 18, 1888.

Conditional and Contingent Wills. *Irish Law Times*, vol. 22, No. 1,107.

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PROFESSOR THEODORE W. DWIGHT has sent to the *Columbia Law Times* the following list of fifty law books which he thinks will be useful to a young practitioner in commencing a law library: Holland's Elements of Jurisprudence (3d edition), Revised Statutes of the United States, Revised Statutes of the practitioner's State, Kent's Commentaries, Schouler on Personal Property, Pollock on Contracts, Addison on Contracts, Story on Agency, Daniel on Negotiable Paper, Reeves's Domestic Relations, Smith on Master and Servant, Bishop on Marriage and Divorce, Bishop on Married Women, Tyler on Infancy, Morawetz on Corporations, Dillon on Municipal Corporations, Angell and Ames on Corporations, Snyder or Dart on Vendor's and Purchasers, Benjamin on Sales (Corbin's or Bennett's edition), Taylor on Landlord and Tenant, Burge on Suretyship, Story or Schouler on Bailments, Redfield on Railways, Story or Wharton on Conflict of Laws, Abbott on Shipping, Arnold on Marine Insurance, Phillips on Insurance, May on Fire and Life Insurance, Dwarris on Statutes, Brown on Statute of Frauds, Angell on Statute of Limitations, Mayne on Damages, Sedgwick on Measure of Damages, Kerr on Fraud and Mistake, Bigelow on Estoppel, May (H. W.) on Fraudulent Conveyances, Lindley on Partnership, Parsons on Partnership, Pomeroy's Equity Jurisprudence, High on Receivers, High on Injunctions, Perry on Trusts, Lewin on Trusts, Williams on Real Property, Jones on Mortgages, Washburn on Easements, Rawle on Covenants, Jarman on Wills, Humphrey's Precedents, Taylor on Evidence, Stephens on Evidence (Chase's edition), Gould on Pleading, and Daniell's Chancery Pleading and Practice.

THE COURTS.

Supreme Court of the United States.

April 30.

L. Brown, of Jackson, Miss.; De Lancey Nicoll, W. B. Cochran, and C. E. Le Barber, of New York city; J. E. Thomas, of Sheboygan Falls, Wis.; W. L. Cole, of Washington, D. C.; J. H. King, of Rapid City, Dak., and D. L. Covill, of Rochester, N. Y., were admitted to practice.

180. The U. S. v. Beebe et al. Decree affirmed.

221. Porter v. White. Appeal from the Supreme Court of the District of Columbia. Decree in General Term affirmed with costs.

933. Bayard v. The U. S. ex rel. White. In error to the Supreme Court of the District of Columbia. Judgment in General Term reversed with costs and cause remanded with a direction to dismiss the petition for the writ of mandamus.

1241. The U. S., ex rel. Augarica de la Rua, &c., v. Bayard. In error to the Supreme Court of the District of Columbia. Judgment of General Term affirmed with costs.

240. Cornell v. Weidner. Decree affirmed with costs.

205. De Saussure v. Gaillard, &c. Dismissed for the want of jurisdiction.

228. Colton v. Colton.

229. Colton v. Colton. Decrees reversed with costs and causes remanded.

220. The F. S. and T. Co. et al. v. Shepherd et al.

256. Shepherd v. Thompson. Appeals from the Supreme Court of the District of Columbia. Decree affirmed, each appellant to pay the costs of their respective appeals in this court.

660. The People of the State of California v. The Cent. Pac. R. R. Co.

661. Same v. The Sou. Pac. R. R. Co.

662. Same v. The North. Ry. Co.

663. Same v. The Cal. Pac. R. R. Co.

664. Same v. The Cent. Pac. R. R. Co.

1157. Same v. The Cent. Pac. R. R. Co. Judgments affirmed with costs and causes remanded to the Circuit Court of the United States for the Northern District of California.

242. Noyes v. Largey. Decree affirmed with cost.

217. Culbertson v. The H. Witbeck Co. Judgment affirmed with costs.

208. Cameron v. Hodges. Decree reversed with costs.

235. Barker v. Craig. Dismissed for the want of jurisdiction.

223. The U. S. v. Broadhead. Dismissed for the want of jurisdiction.

234. The U. S. v. Broadhead. Dismissed for the want of jurisdiction.

199. Hunt v. Blackburn. Motion to restore to the docket continued.

1111. Lent v. Tillson, tax collector, &c., et al. Motion to dismiss or affirm postponed to the hearing on the merits.

318. Marshall v. The U. S. Petition for rehearing granted.

1414. Francis v. The U. S. Motion for a writ of certiorari granted.

1402. U. S., ex rel. Dunlap, v. Black.

1403. U. S., ex rel. Rose, v. Black.

1404. U. S., ex rel. Miller, v. Black. Motion to advance and for leave to submit submitted.

1329. The District of Columbia, appellant, v. McBlair et al. Motion to amend decree submitted.

862. Nailor et al. v. Nailor et al. Motion to dismiss submitted.

275. The Oreg. Ry. and Nav. Co. v. The Oreg. Ry. Co. (limited). Argument continued.

Supreme Court of the District of Columbia.

GENERAL TERM.

April 30.

Kohl v. Just. Opinion by Justice Cox. Decree for complainants.

Averill v. Second National Bank. Opinion by Justice James. Judgment below reversed and cause remanded.

United States v. John E. Lysle. False pretenses. Motion on arrest of judgment sustained.

Miller v. Fleming. Argued and submitted.

IN EQUITY.—New Suits.

April 23.

11130. Mary A. Walling et al. v. Mary E. Smith et al. For account and sale. Com. sol., C. Storrs.

11131. Genevieve B. Wimsatt et al. v. Richard D. Wimsatt. For partititon by sale. Com. sol., W. J. Newton.

April 24.

11132. Hobart A. Smoot v. Eliza Fulton et al. Judgment creditor's bill to sell. Com. sol., J. G. Bigelow.

11133. Laura Lloyd v. Richard Lloyd. For divorce. Com. sol., A. K. Browne.

April 25.

11134. Sarah Ann Lockwood v. Agnes B. Place et al. To sell part lot. Com. sol., Jas. H. Smith.

11135. Victoria M. McGuigan v. James H. McGuigan. For divorce. Com. sol., A. B. Williams.

April 26.

11136. J. Stanley Brown et al. v. Harriet Abbott. To remove cloud of title and for conveyance. Com. sol., J. H. Ralston.

April 28.

11137. Irene Ann Magee et al. v. John W. Hanes et al. To sell land. Com. sols., Morris & Hamilton.

11138. Estate of Frak Martin. Upon petition of wife Mary Ann Martin to appoint committee. Com. sol., Wm. A. McKenney.

CIRCUIT COURT.—New Suits at Law.

April 20.

28602. Wm. C. Tompkins v. Edwin Travers. Replevin. Piffs atty, J. J. Darlington.

28603. Lucy A. Thayer v. Wm. H. Main. Note, $1,250. Piffs atty, C. P. Lincoln.

28604. John W. Green Smith v. Wm. Herbert Smith. Account, $432.26. Piffs atty, H. E. Davis.

April 23.

28605. James W. Barker v. Leopold Newmeyer. Appeal.

28606. John S. Rich v. Edwin B. Hay. Replevin. Piffs atty, Wm. Twombly.

28607. Henry C. Bolden v. The Columbian Harmony Cemetery Society. Account, $450.25. Piffs attys, Smith and Holland.

28608. August C. Clemens v. Catharine Chase. $217.60.

28609. Elias S. Hutchinson, trading as Hayward & Hutchinson, v. Josephine R. Reid. Certiorari.

April 24.

28610. Fillmore Beall, adm'r, v. Geo. G. Cornwell. Policy, $5,000. Piffs atty, S. S. Henkle.

28611. Lawrence Barrett v. Geo. M. Robeson. Note, $1,250. Piffs attys, Edwards & Barnard.

28612. Samuel Cushman v. August Dittrich. Note, $10,750. Piffs attys, Garnett and Mackall.

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April 25.

28613. Otto Kornemann v. Albert H. Dowling. Account, $175.50. Plffs atty, J. J. Darlington.

28614. Lydia A. Philps v. The District of Columbia. Damages, $10,000. Plffs attys, Morris & Hamilton.

28615. George Bergling v. John A. Witzell. Judgment of Justice Strider, $38.95.

28616. Vincent W. Power et al. v. Michael Lawler. Account, $1,449.15. Plffs atty, L. Kent.

28617. Annie Moore v. The Metropolitan Railroad Co. Damages, $15,000. Plffs attys, Carrington and Williamson.

28618. Fillmore Beall et al., adm'rs, v. Geo. G. Cornwell. Policy, $5,000. Plffs atty, S. S. Henkle.

April 26.

28619. Spencer P. Woodson v. Christopher C. Leffler et al. Appeal. Plffs atty, Jos. Shillington.

April 27.

28620. Frank Lloyd v. Maurice Joyce. Damages, $20,000. Plffs atty, S. S. Henkle.

28621. The Pœnix Mutual Life Insurance Co. v. Benj. K. Plain et al. Policy, $225. Plffs attys, Colman and Offley.

28622. Robt. I. Flemming v. John M. Glover. Damages, $20,000. Plffs attys, Perry and Carlisle.

PROBATE COURT.—Justice Cox.

April 27.

Estate A. Jackson Jones. Letters of administration issued to Sallie C. Jones; bond, $2,400.

Estate Ludolph Friederich. Will filed and application of Mary E. Mills for letters of administration c. t. a.

Estate Margaret Campbell. Thomas E. Waggaman appointed administrator; bond, $2,000.

Estate John Q. Adams. Guardian reimbursed for expenditures for wards.

Estate Maurice Cleary. Letters of administration issued to John Cleary; bond, $1,200.

Estate Philip Biegler. Petition of Philip F. Biegler for letters of administration filed.

Estate Wm. H. Scott. Petition of widow for letters of administration.

In re Maggie E. Diggs, minor. James H. Smith appointed guardian; bond, $1,000.

Estate John Stewart. Final notice to creditors, returnable May 25, issued.

Estate Francis D. Connelly. Letters of administration issued to J. D. Connelly; bond, $1,000.

Estate G. Rupli. Administrator authorized to sell certain personal property for $282.15.

Estate Polly Y. Brownell. Administrator authorized to transfer certain bank stock.

Estate Sarah Wood. Petition of Geo. W. Brown for letters of administration.

Estate C. W. Thorn. Letters testamentary issued to Eldred G. Davis; bond, $35,000.

Estate Thomas O'Day. Will admitted to probate and record.

Estate John L. Miller. Letters testamentary issued to George M. Jones; bond, $11,000.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrecia B. Peters v. Isaiah P. Brooks et al. } Equity. No. 10,270.

The Trustees, Randall Hagner and Andrew B. Duvall, appointed in this cause, having reported the sales of the following property, to wit, south half of the east half of lot 57, in Wright and Cox's subdivision of part of Pleasant Plains, unto Conrad Roeben, at and for $700.00, and the west half of lot 53, in said subdivision, unto W. Clarence Duvall, at and for the sum of $1,615.00, it is thereupon, this 25th day of April, A. D. 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of May, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named day.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
18 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 27th, 1888.

In the matter of the Estate of **Ludolph Friederich**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Mary E. Mills.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of April next, at eleven o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
18 Irving Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Drill**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1888.

her
MARY ANN ⋈ DRILL, Ex'x, 1249 32d st. n. w.
mark

18 No. 3032. Ad. D. 14. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 28th day of April, 1888.

Henrietta F. Ritter v. Benjamin Tilley et al. } No. 10,869. Docket 27.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendants, **Susan W. Tilley, William J. Tilley, Susan E. Warner, Mary G. Warner, Kate S. Warner, and Susan J. Warner**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a judgment creditor's bill and to set aside fraudulent deeds.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
18 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John J. Taylor**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of April, 1888.

CAROLINE TAYLOR, Ex'x, 1152 16th st. n. w.
No. 3052. Ad. D. 14. M. M. Holland, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Martha R. Anderson v. Philip T. Ferris et al. } 9672. Equity Docket 25.

The Trustee in the above-entitled cause having reported to the Court that he has sold the real estate referred to therein to Mr. Willis Worster, of Washington city, D. C., for the sum of one dollar and seventy-five cents per square foot, and that the whole amount of the purchase-money, amounting to $6,769.00, has been paid: ordered that said sale be, and the same is hereby, confirmed, unless objections to the same shall be filed within thirty days from the date hereof.

Provided a copy of this order be published once a week for three successive weeks prior to June 1st, 1888, in the Washington Law Reporter.

W. S. COX, J.

A true Copy. Test: R. J. MEIGS, Clerk,
18 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of April, 1888.

Horace F. Page
v.
John F. Dezendorf et al. } No. 11,062. Equity Docket 28.

On motion of the plaintiff, by Mr. A. J. Willard, his solicitor, it is ordered that the defendant, James N. Crett, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish and enforce a right of the plaintiff against real and personal property within the jurisdiction of this Court.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Travis B. Pinn**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1888.

SUSIE E. PINN, Adm'x, 1135 5th st. n. w.
18 No. 3054. Ad. D 14. R. S. Smith, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **George Rupli**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of April, 1888.

JULIUS HUGLE, Adm'r, 915 La. av. n. w.
18 No. 3066. Ad. D. 14. Wm. B. Lord, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Ellen French**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

WILLIAM BRITT, Adm'r, Tenlytown, D. C.
18 No. 3065. Ad. D. 14. F. W. Jones, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Mary J. Rutherford**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1888.

JAMES A. RUTHERFORD, Adm'r, 501 F st. n. w.
18 No. 3046. Ad. D. 14. Chas. A. Elliot, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Robert M. Miller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1888.

ANN MILLER, Adm'x, 521 4½ st. s. w.
18 No. 3063. Ad. D. 14. Milton Barnard, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 27th, 1888.

In the case of John S. Butler, Executor of **Francis Madison**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
18 No. 1451. Ad. D. 16. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 27th, 1888.

In the case of Agnes Mc. Stewart and John Stewart, Executors of **John Stewart**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
18 No. 2651. Ad. D. 13. Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 25th, 1888.

In the case of Stanislaus F. Ryan, Executor of **Patrick J. Ryan**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

Test: DORSEY CLAGETT, Register of Wills.
18 No. 2590. Ad. D. 13. Eugene Carusi, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Phillip Biegler**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1888.

PHILIP F. BIEGLER,
Ex'r, 1201, cor. 12th and E sts. s. e.
18 No. 3012. Ad. D. 14. W. K. Duhamel, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **John A. W. Waters**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

MARGARET T. WATERS,
Adm'x c. t. a., 1322 32d st. n. w.
18 No. 3022. Ad. D. 14. F. W. Jones, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Peter Campbell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1888.

T. E. WAGGAMAN, Ex'r, 917 F st. n. w.

17 Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Annie V. Ryder v. **Margaret E. Diggs et al.** } No. 11,017. In Equity.

Benjamin F. Leighton and James H. Smith, Trustees in this cause, having reported a sale of lot twelve (12), in square five hundred and eighty-seven (587), to Dennis Toomey for the sum of twenty-five hundred dollars ($2,500), it is, this 21st day of April, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before Tuesday, the 22d of May next.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the last-mentioned day.

By the Court. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

17 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the matter of the Estate of **Mary Bryerly**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Marvin Eastwood.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of May next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

17 W. P. Bell, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the case of William G. Moore and Daniel McFarlan, Executors of **William W. Moore**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2573. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 18th, 1888.

In the case of Julia C. Jackson, Administratrix of **Jesse W. Jackson**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2681. Ad. D. 13. Charles H. Cragin, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Joseph L. Johnson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

M. F. JOHNSON, Ex'x, 2021 33d st.

17 No. 3058. Ad. D. 14. R. P. Jackson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Middleton Mitchell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 19th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 19th day of April, 1888.

G. W. RAY, Ex'r, 3275 M st., Washington, D. C.

17 No. 2959. Ad. D. 13. R. P. Jackson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the case of Joseph J. Waters, Administrator of **Joseph J. Nicholson**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and in the Evening Star, of Washington city, D. C., previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.

17 No. 2700. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 18th, 1888.

In the case of Charles H. Cragin, jr., Executor of **Charles H. Cragin**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2693. Ad. D. 13.

IN THE SUPREME COURT OF THE D'STRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 24th, 1888.

In the case of Moses Colman, jr., Administrator of **Henry Colman**, deceased, the Administator aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2652. Ad. D. 13. Leon Tobriner, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Carrie F. Hunt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of January next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of January, 1888.

ELBRIDGE J. PATTEE, Adm'r.

17 No. 2924. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Helmick**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1888.

CHARLES B. CAYWOOD, Adm'r, 916 F st. n. w.

17 No. 3056. Ad. D. 14. E. H. Thomas, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Elizabeth Kelly**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of April, 1888.

WILLIAM S. BROCK, Adm'r, 940 K st. n. w.

17 No. 3049. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Susan Walker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of March, 1888.

BENJ. BUTTERWORTH, Adm'r c. t. a.,
407 Maple ave., Washington, D. C.

16 No. 2927. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of Minneapolis, Minnesota, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Edward A. Paul**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1888.

AMASA C. PAUL, Adm'r, 321 4½ st. n. w.

16 Wm. Twombly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of April, 1888.

Nora O'Leary et al. v. **Margaret O'Leary et al.** } No. 11,059. Equity Docket 28.

On motion of the plaintiffs, by Mr. Neal T. Murray, their solicitor, it is ordered that the defendants, **Margaret O'Leary, Elizabeth O'Leary, Ellen O'Leary, John O'Leary, Mary O'Leary, and Margaret O'Leary**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain partition, by sale, of the real estate of which John O'Leary died seized and also of the real estate of which Ellen O'Leary died seized.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

15 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William M. McConvey v. **Thomas Geary, Executor, &c., of James Monaghan.** } No. 10,208. Equity Doc. 26.

This cause being referred to me to state an account of the debts owing by **James Monaghan**, deceased, and distribution of the assets in the hands of the executor, notice is hereby given that I shall proceed to execute the said order of reference on Saturday, the 5th day of May, 1888, at 12 o'clock m., at my office, in the United States Court-House, Washington, D. C., at which time and place all persons may appear and be heard. All creditors of the said James Monaghan are notified to present their claims, with the proofs, on or before the said date.

16 JAS. G. PAYNE, Auditor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of April, 1888.

Edward F. Beale et al. v. **Gertrude Wheeler et al.** } No. 9,937. Equity Docket 25.

James H. Saville, trustee in this cause, having reported a sale of lots 28 and 29, in trustee's subdivision of lot 1, in square 491, and also all the right and title of the parties hereto in and to parts of lots 1 and 24, in same square, lying immediately north of said lots 28 and 29, to George N. Beale, Mary E. Beale, Mary E. Read, and the heirs of Truxtun Beale, deceased, for the sum of $31,000, it is, this 12th day of April, 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of May, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

16 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 10th, 1888.

In the case of William O. Denison, Administrator c. t. a. of **Benjamin Holladay, jr.**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 4th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

16 No. 2673. Ad. D. 13. Benjamin F. Leighton, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William Young**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of April, 1888.

JANE E. YOUNG, Adm'x, 751 8th st. s. e.

16 J. T. Cull, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 13th, 1888.

In the case of William H. Harris, Administrator of **Matilda Madison**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

16 No. 2415. Ad. D. 12.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James O'Leary et al. v. Charles M. O'Leary et al. } Equity No. 11,075. Docket 28.

On motion of the plaintiffs, by their solicitor, Chapin Brown, esq., it is, this 14th day of April, A. D. 1888, ordered that the defendants, **James A. Ward, Robert H. Ward,** and the **Unknown Heirs of Barnerd Givenny,** cause their appearance to be entered herein on or before the first rule-day occurring forty (40) days after this day; otherwise the cause will be proceeded with as in case of default, the summons heretofore issued in this cause having been returned by the marshal of the Court "Not to be found" as to these above-named defendants.

The object of this suit is for the sale, for the purpose of partition, of sub-lots 28 and 29, in square 622, and original lot 10, in square 529, according to the ground plat of the city of Washington, and fully described in the bill filed herein; and also for the release of a deed of trust recorded in liber J. A. S. 73, folio 342 et seq., one of the land records of the District of Columbia.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

16 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 11th, 1888.

In the case of Arabella Spencer, Executrix of **Dan A. Spencer,** deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 11th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

16 No. 2647. Ad. D. 13. D. E. Cahill, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of April, 1888.

Joseph C. Wood v. Ada Wood. } No. 11,077. Equity Docket 28.

On motion of the plaintiff, by Mr. Thomas C. Taylor, his solicitor, it is ordered that the defendant, **Ada Wood,** of the city of Natchez and State of Mississippi, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the ground of adultery.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

15 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Chester Goodrich,** late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of April, 1888.

FRANCIS H. SMITH, Adm'r, 1222 F st. n. w.

16 No. 3008. Ad. D. 14. B. F. Leighton, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Ora B. Webb,** late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1888.

A. B. WEBB, Adm'r.

16 W. Preston Williamson, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of April, 1888.

David F. McGowan et al. v. Nancy Vodery et al. } No. 11,080. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendants, **The American Tract Society, the Trustees of the Presbyterian Board of Publication and Sabbath-School Work,** and the **Woman's Benevolent Association,** Washington city, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a construction of the will of Catherine E. Coyle as the certain legacies contained therein.

This order to be published in the Washington Law Reporter once a week for three successive weeks before said day.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk.

15 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of April, 1888.

Joseph R. Hertford v. George C. Lewis. } No. 28,487. Docket 32.

On motion of the plaintiff, by Mr. C. Storrs, his attorney, it is ordered that the defendant, **George C. Lewis,** cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject the defendant's goods and chattels, attached on the 28th day of February, A. D. 1888, to the payment of the plaintiff's demands, as set forth in the above-entitled suit.

By the Court. A. B. HAGNER, Asso. Justice.

True copy. Test: R. J. MEIGS, Clerk, &c.

15 By J R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 20th, 1888.

In the case of Julia C. Buker, Executrix of **James W. Buker,** deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 18th day of May, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

17 No. 2572. Ad. D. 13. C. P. Conger, 47 Corcoran Building.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Amelia M. Green,** late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

WM. BURRIS, Ex'r, cor. 7th and F sts. n. w.

17 No. 3021. Ad. D. 14. J. T. Cull, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Charles H. Wright,** late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of April, 1888.

ELIZABETH C. WRIGHT, Adm'x, 741 11th st. s. e.

17 No. 3055. Ad. D. 14. J. T. Cull, Proctor.

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Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
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Louisiana, 1 to 10 Martin.
Lovelass on Wills.

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McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

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Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
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Preston on Abstracts of Title, 2 vols. in one.

Railway Law (Bonner), 1878.
Ray's Medical Jurisprudence of Insanity, 1853.
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Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

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U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

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Wentworth on Executions.
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Williams on Executors, &c., vol. 2, Thobault's Notes.

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ESTABLISHED 1874.
WM. STONE ABERT, - - - - - Editor
VOL. XVI. - - - - - - - No. 19
WASHINGTON, D. C. - - - - - MAY 9, 1888

Book Notice.

The Practice and Procedure of the Supreme Court of the District of Columbia, being a Collection of its Rules and of the Federal and Maryland Statutes Affecting the Practice and Procedure of the Court, Topically Arranged and Annotated. By Franklin H. Mackey.

The above work, as its title indicates, has for its object a systematic collocation of the laws in force relating to the practice and procedure of the Supreme Court of the District of Columbia. It is a single volume, of about 750 pages, with a complete table of contents, a full list of the more than 2,500 cases cited, and a carefully prepared index. It is bound in law-calf, and in length and breadth is like the ordinary editions of law works. The contents are divided into five parts—1, Law and General Practice; 2, Criminal Procedure; 3, Equity Practice; 4, Patent Practice; 5, Rules of Admiralty Practice. These are subdivided into chapters and numbered sections, each section being preceded by catch-words of its contents in heavy type. The author, in arranging his topics, has followed the official edition of our Rules of Court "in recognition of the convenience, for purposes of reference, of an accustomed and long-existing arrangement."

Lord Bacon once intimated that every lawyer owes a debt of gratitude to his profession. Mr. Mackey may be congratulated upon having more than paid his obligation. The limited field for its sale renders an adequate pecuniary return to the author for his labor and thought almost an impossibility, but he probably foresaw this and gains his highest pleasure in the consciousness of having well earned the thanks of a bench and bar, who have long looked upon a work of this character as a great desideratum. Readers who desire to obtain copies can do so by applying to the manager of this journal.

THE choice of a new Chief Justice is an event in the mutations of official life of rare and striking occurrence. Including John Rutledge, who was rejected by the Senate at its first meeting after his appointment, and William Cushing, who was confirmed but resigned without qualifying, there have been but eight Chief Justices from the inception of the Government till the death of the sturdy occupant who so recently filled the exalted position.

The office is not only intrinsically great, but greater yet by reason of the eminence of the men who have filled it. It is the tendency of highly civilized and generous as well as of superstitious and crude peoples to apotheosize their heroes. To exalt virtue as well as to degrade vice is the unquenchable instinct of the human breast. Because of this and of the learning, the culture, the profound judgment, and pure lives of its tenants the Supreme Bench has gathered glory with the advancing years, till the people have grown to look upon its chief seat as a sacred place—Freedom's Holy of Holies.

This feeling has taken such a deep root that the death of an incumbent strikes home to the public heart with the force of a personal bereavement, and, following the poignant pang, the public mind grows feverishly sensitive lest an unworthy or incapable successor may be chosen. At last, when the choice is made, a hasty protest rises to the lips that the man chosen does not measure up to the almost divine standard set, which protest sinks back and gives place to the more rational feeling that only by trial can the man be measured.

In the past trial has always shown the Chief Justice to be fit, and gradually time has invested him with all the luster and mystery of his great office, and he has become enthroned in the affections of the people as the embodiment of justice, just as his predecessor was before him. And so we trust and think it will be with Melville W. Fuller. He was not, at the time his name was announced, widely known, though highly respected for his abilities and character in the State and city of his adoption.

It is the glory of the Republic that the general excellence of her citizens is so high that she could choose from among them a comparatively unknown man to fill the highest judicial place in her gift; and we cannot but be impressed with the idea that this is only an illustration of the fact that scattered among the teeming millions of the land are many unassuming men pursuing the even tenor of their ways, but well fitted for great deeds should opportunity offer.

The main qualities the Chief Justice of the United States should possess are a spotless private life, *suaviter in modo, fortiter in re*, and the judicial instinct. By the latter is meant that love of balancing reasons which induces infinite patience and forbearance and the utmost carefulness. Of course he must be a lawyer.

It is not perhaps necessary that the mind of the Chief Justice should be the dominant mind

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of the Supreme Bench nor that his legal knowledge should be more extensive, his general culture wider, his grasp and correct application of principles more perfect, his capacity to differentiate cases more subtile, or his logic clearer than those of his brethren. Both Chase and Waite had their superiors in nearly all these points; but it is sufficient if possessing the qualities named and avoiding strifes of all kind he dedicates his life to his duty and stands forth in his entirety as a worthy head of a great bench of judges.

It was said of Mr. Fuller, before his appointment, by a legal journal of Chicago, that "his integrity is of that firm, unflinching kind that cannot be corrupted by influence or power. Endowed by nature with intellectual faculties of the highest order, improved and developed by an excellent education and a life of study, his opinions upon the bench would rank among those of the ablest judges of that tribunal. His record as a man, a citizen, and a lawyer is without stain." This is lofty praise, and we have no reason to believe that the new Chief Justice will not be worthy to fill the place of Taney, Chase, and Waite, if not of the great Marshall himself.

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

MORTON MARYE, Auditor of Public Accounts of the State of Virginia,
v.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Decided April 23, 1888.

The Baltimore and Ohio Railroad Company, a Maryland corporation, has no part of its line in the State of Virginia, but leases several lines therein from companies chartered by that State, and uses its own rolling-stock on them. *Held*, that, under its present laws, the State of Virginia cannot tax said company on account of said rolling-stock.

Mr. Justice MATTHEWS delivered the opinion of the court.

This is a bill in equity filed by the Baltimore and Ohio Railroad Company against the taxing officer of the State of Virginia, for the purpose of enjoining him from selling certain engines and cars, the property of the complainant, for the payment of a tax alleged to have been illegally assessed thereon. There was a decree in the Circuit Court granting the relief prayed for, from which this appeal is prosecuted.

The material facts in the case are these: The Baltimore and Ohio Railroad Company is a corporation organized under the laws of Maryland, and a citizen thereof, by virtue of whose charter its rolling-stock is exempt from taxation. The line of its road does not at any point lie in the State of Virginia. It, however, connects with certain roads belonging to corporations incorporated by various acts of the Legislature of Virginia, to wit, the Winchester and Potomac Railroad, the Winchester and Strasburg Railroad, and the Strasburg and Harrisonburg Railroad, the last named being a part of the old Manassas Gap Railroad; and during a portion of the time embraced in the period for which the taxes in question were levied it worked the Valley Railroad from Harrisonburg to Staunton. All of these roads were operated by the Baltimore and Ohio Railroad Company by virtue of leases or contracts, which company for that purpose furnished and used its own rolling-stock, consisting of engines and cars. None of the Virginia corporations owning either of these roads was the owner of any rolling-stock. The manner in which this rolling-stock was employed for this purpose is thus described: "There is no such rolling-stock assigned permanently to the four lines above named, or either of them, in the State of Virginia. The trains in which the rolling-stock is used on the four lines above named now start from Lexington, Virginia, and pass through the State of Virginia, over the four lines of railroad above named, into the State of West Virginia, and thence into the State of Maryland to the city of Baltimore, or if any of the cars are destined to Western points, thence from Harper's Ferry to the West, but the trains in which the cars are hauled are run solid from Lexington, Virginia (and formerly before the road was completed to Lexington from Staunton, Virginia), to Baltimore. None of the rolling-stock is assigned permanently to service in the State of Virginia, nor is any of the rolling-stock set apart to the four lines in that State, or to the four valley lines above mentioned at all; but such rolling-stock is used interchangeably upon the main line and branches of the Baltimore and Ohio Railroad in the States of Maryland and Virginia, and, indeed, also upon the divisions of the Baltimore and Ohio Railroad in Pennsylvania, and in States west of the Ohio river, just as the necessities of the service of the company require. Sometimes this rolling-stock will be found on the main line, sometimes on the Pittsburg division, and sometimes on the trans-Ohio divisions, and there is none of it that is permanently set apart for use upon the four valley lines in Virginia, above described."

The several Virginia corporations owning these four railroads, respectively, made their annual reports to the auditor of public accounts, as required by law, and were by the board of public works duly assessed on their roadways, tracks, depots, and other real estate owned by them. No tax was assessed or levied as against them on account of any rolling-stock, because they were not reported to be the owners of any. In the month of June, 1883, the auditor of public accounts for the State of Virginia assessed the Baltimore and Ohio Railroad Company for taxes on its rolling-stock used on these roads for the years from 1870 to 1881, inclusive, amounting in the aggregate for eleven years to the sum of $22,249.25 and placed the assessment in the hands of the treasurer of Augusta county, Virginia, for collection. This officer was proceeding to collect these taxes by a distraint of the rolling-stock in question, the property of the complainant, when his proceedings were ar-

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rested by the injunction of the Circuit Court, afterward made perpetual by its final decree.

The act of the General Assembly of the State of Virginia, under which the assessment and collection of these taxes are sought to be justified, is contained in section 20, chapter 119, of the acts of the Virginia Legislature, session of 1881–1882, being part of the taxing laws of the State originally enacted in 1870 and 1871, and continued with amendments to the present time. The material part of the act applicable to this case is as follows:

"19. Every railroad and canal company not exempted from taxation by virtue of its charter shall report annually on the 1st day of June, to the auditor of public accounts, all of its real and personal property of every description as of the 1st day of February of each year, showing particularly in what county or corporation such property is located, and classifying the same under the following heads:

"First. Roadway and track, or canal bed.

"Second. Depots, depot grounds and lots, station buildings and fixtures and machine-shops.

"Third. Real estate not included in other classes.

"Fourth. Rolling-stock, including passenger, freight, cattle, or stock; baggage, mail, express, sleeping, palace, and all other cars owned by or belonging to the company; boats, machinery, and equipments; houses and appurtenances occupied by lock-gate keepers and other employes.

"Fifth. Stores.

"Sixth. Telegraph lines.

"Seventh. Miscellaneous property.

"Every such company shall also report, on or before the 1st day of June of each year, the gross and net receipts of the road or canal for the twelve months preceding the 1st day of February of each year, and in all cases the report shall be so made as to give the data on which the same is made. If such road or canal is only in part within the Commonwealth the report shall show what part is within the Commonwealth and what proportion the same bears to the entire length of the road or canal, and shall apportion the receipts accordingly. The report herein required shall be verified by the oath of the president or other proper officer. Upon the receipt of every such report it shall be the duty of the auditor of public accounts to lay the same before the board of public works, who shall, after thirty days' notice previously given to the president, treasurer, or other proper officer, proceed to ascertain and assess the value of the property so reported, upon the best and most reliable information that can be procured; and to this end shall be authorized and empowered to send for persons and papers should it be deemed necessary. A certified copy of the assessment, when made, shall be immediately forwarded by the secretary of the board to the president or other proper officer of every railroad or canal company so assessed, whose duty it shall be to pay into the treasury of the State, within sixty days after the receipt thereof, the tax which may be imposed thereon by law. A company failing to make such report, or to pay the tax assessed upon its property, shall be immediately assessed, under the direction of the auditor of public accounts, by any person appointed by him for the purpose, rating their real estate and rolling-stock at $20,000 per mile; and a tax shall at once be levied on such value at the annual rate levied upon the value of the other property for the year. Such tax so levied, as well as the sum required to be paid upon the report hereinbefore mentioned, if the same be not paid at the time provided herein, shall be collected by the treasurer of some county in which such company owns property, to whom the auditor may deliver the assessment or a copy thereof. The treasurer may distrain and sell any personal property of such company, and shall pay the taxes into the treasury within three months from the time of the assessment, or a copy as aforesaid may be delivered to him, the compensation of such treasurer to be the same as he receives for collecting other taxes in his county or corporation."

It is admitted that this is the only legislation of the State of Virginia under which the tax in question can be justified; if it does not warrant the proceedings, there is no statute which does. The single question presented in the case is whether the Baltimore and Ohio Railroad Company, as to the property on account of which it is sought to be taxed, is liable to taxation under the provisions of this act.

It is not denied, as it cannot be, that the State of Virginia has rightful power to levy and collect a tax upon such property used and found within its territorial limits, as this property was used and found, if and whenever it may choose, by apt legislation, to exert its authority over the subject. It is quite true, as the *situs* of the Baltimore and Ohio Railroad Company is in the State of Maryland, that also, upon general principles, is the *situs* of all its personal property; but for purposes of taxation, as well as for other purposes, that *situs* may be fixed in whatever locality the property may be brought and used by its owner by the law of the place where it is found. If the Baltimore and Ohio Railroad Company is permitted by the State of Virginia to bring into its territory and there habitually to use and employ a portion of its movable personal property, and the railroad company chooses so to do, it would certainly be competent and legitimate for the State to impose upon such property, thus used and employed, its fair share of the burdens of taxation imposed upon other similar property used in the like way by its own citizens. And such a tax might be properly assessed and collected in cases like the present where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing, according to the exigencies of the business. In such cases the tax might be fixed by an appraisement and valuation of the average amount of the property thus habitually used and collected by distraint upon any portion that might at any time be found. Of course the lawfulness of a tax upon vehicles of transportation used by common carriers might have to be considered in particular instances with reference to its operation as a regulation of commerce among the States, but the mere fact that they were employed as vehicles of transportation in the interchange of interstate commerce would not render their

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taxation invalid. No question on that account arises in this case.

But looking at the statute under which the proceeding in question has been taken for the taxation of this property, we think it quite clear that it has no application to the rolling-stock owned by the Baltimore and Ohio Railroad Company employed by it in the manner described in the operation of other railroads in Virginia. The terms of the act, indeed, include "every railroad and canal company not exempted from taxation by virtue of its charter," but that language, according to a general rule of interpretation, must be confined to corporations deriving their authority from the laws of Virginia. It is apparent, also, from the other expressions contained in the law, as well as its whole purview, that it was intended to apply only to such domestic coporations, as in the case of railroad companies, were the owners of railroads and the property usually appurtenant thereto lying and being within the State. According to the description of the act the railroad company is supposed to own a roadway and track, and depots, depot grounds, station buildings and fixtures, and machine-shops, together with real estate, rolling-stock, and telegraph lines. Every such company is required to report its gross and net receipts, and a specific provision is made that if its road is only in part within the Commonwealth the report shall show what part is so and what proportion the same bears to its entire length, apportioning the receipts accordingly. In case of a failure of the company to make such a report, or to pay the tax assessed upon its property, it is provided that it shall be immediately assessed under the direction of the auditor of public accounts by some person appointed by him for that purpose, rating its real estate and rolling-stock at $20,000 per mile, on which a tax shall be levied at the annual rate levied upon the value of other property for the year. None of these provisions are applicable to the case of the Baltimore and Ohio Railroad Company in respect to its ownership of the rolling-stock in question.

It follows from this that it was not liable for the payment of the taxes, the collection of which was enjoined by the decree of the Circuit Court. That decree is accordingly affirmed.

Requirements of a Judge.

A judge requires learning, integrity, industry, patience, courtesy, and unruffled temper. While not insensible to public esteem, he should not disdain to court popular applause. He should be one whose firm purpose is to declare the law without fear, favor, or affection, who looks for his highest reward in his own conscience and in the veneration that will accompany him through life and follow him weeping to the tomb. Not only should our bearing toward the court tell our disposition, but indicate to the assembled citizens the difference due to those selected to expound the law and administer justice. We should be indulgent to their imperfections and peculiarities of temperament. They grow weary. We of the bar, when our case is argued or trial over, can leave the presence, the burden lifted from our brain; yet, with the judge, the ending of one cause is but the beginning of another.—*Daniel Dougherty before the New York State Bar Association.*

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

EMMA LINDENKOHL and GEORGE W. JUST
v.
LIZZIE JUST, an infant.

No. 10,694. EQUITY DOCKET 27.

Decided April 30, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Where a conflict arises between two clauses in a will the latter clause must prevail.

Mr. FAY for complainants.

HAMILTON and WYLIE for defendant.

Mr. Justice COX delivered the opinion of the court.

In the case of Emma Lindenkohl and George W. Just v. Lizzie Just, the bill seeks relief under the following circumstances:

George Just died in July, 1873, leaving a wife and two children and also two step-children, who were the children of his wife's former marriage. He made a will a day or two before his death, which we will examine later. At the time of his death he had certain equitable interests in real estate, which are described in these proceedings. After his death, the legal title to the property was conveyed to his widow in fee-simple. In 1886 she died, and the consequence was that the legal title to the property descended to all of her children, those of her former and those of her second marriage. One-half went to the children of each marriage. The complainants, who are the children of the deceased testator, Just, say that this was a mistake, and that, according to the terms of the will of the testator, it was intended that the wife should have a life estate in this property only, with a remainder to them, his own children, and that, therefore, as to one undivided moiety of the property, the step-children are to be considered as trustees for the others, who are the complainants; that they never discovered this error until recently, when they attempted to make a sale of the property, and that thereupon the facts were explained to John Just, the elder of the step-children, and he acquiesced in the claim of the complainants and joined them in executing a deed of the property, but the other step-child being a minor, it became necessary to file this bill to rectify the error.

Of course, this question depends entirely upon the will of Charles Just. The difficulty grows out of the fact that it contains two residuary devises, which apparently are in direct contradiction of each other. The first residuary devise is found in the fourth and fifth clauses, as follows:

"*All the rest of my real estate in the said city of Washington, or wherever situated, I give and devise to my beloved wife, Margaret Just, and my two children, Emma and George W., in fee-simple absolutely, to be equally divided between them, share and share alike, the share of my said*

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daughter to be for her own sole and separate use, as I have already provided in respect to her interest in aforesaid property.

"*Fifth. All the rest and residue of my personal estate which shall be left after the payment of my debts, funeral expenses, &c., I direct shall be paid to my beloved wife as her own absolutely, subject only to the payment of such debts and charges.*"

But after making this devise the testator goes on and says:

"I have a partnership contract with Moses Kelly and A. R. Shepherd for the construction of ten houses on Carroll street, Capitol Hill, square 732. I direct my executors to carry out my part of this contract in good faith, and the profits of the contract, if any, I give and bequeath to my beloved wife Margaret. The land upon which these houses are building stands in my own name, and all the contracts in regard to the building are in my own name.

"Seventh. I am engaged also in putting up three houses on Ninth street, between D and E, for Mr. George Wilner. This contract I also wish to be carried out and completed, and the profits, if any, to go to my said wife, as in the case of the houses on Capitol Hill.

"Eighth. I have an interest in partnership with Wilson E. Brown in the brick-making business. It is my wish that this business should be settled as speedily as possible.

"Ninth. In case there should be a deficiency of the personal estate for meeting the charges imposed upon it by this will I direct that square No. 1052 be sold or mortgaged, in whole or in part, as may be necessary, to supply said deficiency.

"*Tenth. Whatever other property I may have at the time of my decease I give, devise, and bequeath as follows: All the real estate to my wife during her natural life and the reversion or remainder of the same, after her death, to my son and daughter in common and their heirs and assigns forever. Of the personal and mixed estate I give and bequeath to my said wife one-third absolutely and the remaining two-thirds to my said children, share and share alike, the share of my real and personal estate herein devised to my wife, or bequeathed to her, to be in lieu of her dower.*"

It will be observed that the first residuary devise gave to the wife one undivided third of the real estate. This gives her the whole for life, with the remainder, in the whole, to the testator's own children. The first gives all the personal property to the wife, and this gives her only one-third. It is clear that, if these two residuary devises relate to the same subject-matter, they are in absolute conflict with each other, and, according to the well-settled rule, the latter one must prevail, and that would sustain the claim of these complainants to the whole of the real estate after the death of the widow.

It is claimed, however, on behalf of the defendant, the younger step-child, that the two clauses may be reconciled by applying the first to the property owned by the testator at the time he executed the will and the other to that which he may have acquired afterward. This contention derives some countenance from the singular phraseology of the will. The first residuary clause reads "all the rest of my real estate in the said city of Washington or wherever situated." The second clause says "whatever other property I may have at the time of my death."

It may assist us somewhat in the understanding of this language if we look at the disposition made of the personal property, because there is no reason in the world to suppose that the testator, in describing this property, with reference at least to the date of its acquisition, meant to discriminate between the real and personal property. The tenth clause is comprehensive of both—"whatever other property I may have at the time of my death."

Going back back again, we find in the fifth clause the following:

"All the rest and residue of my personal estate *which shall be left after the payment of my debts, funeral expens s, &c.*, I direct shall be paid to my beloved wife."

That fixes the time for the ascertainment of the personal property to be at the death of the testator—"all that may be left after the payment of debts and funeral expenses." That is comprehensive enough to include everything he may have had at the time of making the will and everything he may have acquired afterward; in other words, it refers to the whole of his personal estate.

The tenth clause—"whatever other property I may have at the time of my death"—is comprehensive enough to include all he acquired afterward and all he had at the time of making the will; so that these two clauses, as far as his personal estate is concerned, are equally extensive, and there is an absolute conflict between them. They cannot be reconciled.

Therefore we are obliged to conclude that, after making the first disposition, the testator changed his mind, as to the personal property, and purposely gave it a different direction in the tenth clause. Now, if he did that with reference to the personal property, we are relieved of any difficulty in understanding that the last devise involved equally a change of intention in reference to the real estate, because the language as to the two is equally general and comprehensive—"*whatever other property I may have at the time of my death.*" But there is a pregnant and almost conclusive feature found in the conclusion of the tenth clause: "The share in my real and personal estate herein devised to my wife, or bequeathed to her, *to be in lieu of her dower;*" that is, her dower generally—dower in the whole estate. It is totally inadmissible to imagine that the testator meant to give, in lieu of dower in his whole estate, a life interest in his possible future acquisitions, instead of a life estate in his then existing property.

We must hold, therefore, that this latter clause applied to the property which he had when he made his will, and that therefore, as it is brought in direct conflict with the first clause, the latter clause must prevail, the effect of which is that the complainants are entitled to the whole of the real estate left by the testator after the death of the wife, and it must so be decreed as against the defendant in this cause. These considerations are sufficient to satisfy us as to the meaning of the will without going into an examination of the authorities, because it is perfectly well settled that where a conflict arises between

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two clauses in a will the latter must prevail. It seems, also, more consonant with the general intent of the testator, evidenced on the whole face of the will, that he should give all of his property to his own children rather than to give part of it to his step-children. In a previous part of his will he bequeathed pecuniary legacies to them of $1,000 each, which, it would seem, was intended to satisfy all their claims on him. The rest of his estate, it is natural to suppose, was intended to go to his own children.

SUPREME COURT OF MISSOURI.

BUNN v. LINDSAY.

Decided March 19, 1888.

1. Where the lien of a judgment has attached to real estate it cannot be displaced or defeated by the subsequent occupation of the property by the owner as a homestead.
2. The failure of the sheriff to set off a homestead to one entitled to it will not render a sale of the property void, although the purchaser cannot obtain possession of any part until such homestead is set off, and the homestead occupant can have the sale set aside at the return term of the execution.
3. Where the owner of land applied for a loan to discharge a mortgage, constituting the only incumbrance on his property, and after an abstract of the title had been procured, and pending the completion of the loan and deed of trust, consuming some six months, a judgment was taken against the land-owner, the subsequent completion of the loan and payment by the mortgagee of the original mortgage, at the request of the mortgagor will not entitle the lender to be subrogated to the right of the mortgagee in the original mortgage which was released, although he was ignorant of the judgment lien when he applied the loan in discharge of the mortgage.

Justice BRACE delivered the opinion of the court.

On the 5th day of September, 1873, John M. Lindsay, being the owner in fee of the undivided half of sec. 8, T. 59, R. 32, in De Kalb County, executed his note of that date to the St. Joseph Building Company for the sum of $6,000, and on the same day, with his wife, executed a deed of trust on said undivided half of said section to secure the payment of said note, which was recorded on the 9th day of September, 1873, in said county.

On the 1st day of December, 1873, the said Lindsay executed his note, payable to the order of Joel T. Smith six months after date, for the sum of $1,750. About the 1st of July, 1874, Lindsay applied to one House, at Cameron, Missouri, who was the agent of plaintiff, a money-lender, then resident of Bloomington, Illinois, for a loan of $2,500 to pay off said deed of trust. House, at the instance of plaintiff, examined the records of De Kalb County, made an abstract of Lindsay's title to said real estate, showing that there were no incumbrances on said property except said deed of trust, and forwarded it to plaintiff, informing him that the money to be borrowed was to be used in paying off the debt secured by said deed of trust. Thereupon plaintiff prepared three bonds or notes and a deed of trust on said real estate to be executed by said Lindsay, each bearing date the 1st of July, 1874—two of the notes for $1,000 each and one for $500—payable to plaintiff on the 1st of July, 1879, at the Mercantile National Bank, at Hartford, with interest from date at the rate of 10 per cent. per annum, payable semi-annually on the 1st days of January and July, the interest to bear the same rate of interest as the principal after due, as evidenced by ten interest coupons attached to each of said notes or bonds, and all secured by said deed of trust to one Powell, with power of sale in case of any default in payment of principal or interest, and forwarded said notes and deed of trust to his said agent to "complete the transaction," who thereupon entered into negotiations with the building company to pay off their claim.

On the 12th of December, 1874, Gideon C. Paramore recovered judgment in the Circuit Court of Clinton County against Lindsay, on the Smith note, for $1,972, and on the 15th of December, 1874, filed a transcript of said judgment in the office of the clerk of the Circuit Court of De Kalb County, which was thereupon duly docketed and recorded by said clerk. On the 23d of January, 1875, Lindsay signed the bonds, and he and his wife executed and acknowledged the deed of trust prepared by plaintiff, and the same were delivered to House, his agent, who thereupon placed plaintiff's draft on New York for $2,500 in the Cameron Deposit Bank, to be delivered to the St. Joseph Building Company upon the surrender by them of Lindsay's note and a release of their trust deed.

On the 25th of January, 1875, the building company, in Buchanan County, executed and acknowledged a release and satisfaction of their trust deed to Lindsay in consideration of the sum of $2,510 paid by him, and on the 28th of January, 1878, this deed of release and Lindsay's deed of trust to Powell to secure plaintiff's bonds were at the same time filed for record in the office of the recorder of De Kalb County. In March, 1876, Lindsay, who before that time had been residing on a forty-acre tract of land adjoining said section 8, moved into a house on said section which he had previously built, and continued to reside there from that time with his family until 1880, when he removed from the premises and left the State.

On the 6th of December, 1877, Paramore caused an execution to be issued on his judgment, which, on the 10th of December, 1877, was levied on all his interest in said real estate, and by virtue thereof the same was, on the 8th of October, 1878, sold, and he became the purchaser thereof at the price of $205, and received the sheriff's deed therefor. Notice was given at the sale that Lindsay claimed a homestead in the land, and that plaintiff claimed a lien upon the land, superior to Paramore's judgment, to the amount of $2,500, which he had paid to extinguish the St. Joseph Building Company's lien for $6,000. The testimony tended to show that at the time of the sale the land was worth $10 per acre.

At the October term, 1878, of the Clinton Circuit, to which the execution was returned, Lindsay filed a motion to set aside the sale for the reason that a homestead in said land had not

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been set off to him by the sheriff prior thereto, which motion was by him withdrawn at the October term of said court, 1879. On the 10th of September, 1879, Paramore, by general warranty deed, conveyed said land to the defendant, James B. Leisenrig, for the expressed consideration of $2,500. At the April term, 1884, of the De Kalb Circuit, plaintiff instituted this suit, in his petition charging that defendant Leisenrig paid no consideration for the land, and received his deed therefor with notice of the forgoing facts, and that the sale to Paramore was void for the reason that the sheriff failed to set off Lindsay's homestead, and praying that he be subrogated to all the rights and remedies the St. Joseph Building Company had by virtue of their deed of trust against said land, to the extent of $2,500, with interest thereon at the rate of 10 per cent. per annum from the date of their payment of that sum to the building company, and that the same be declared a lien upon said land against defendants; that their equity of redemption be foreclosed, and the land sold to satisfy such lien. Defendants Lindsay and Paramore were not served and did not answer. Defendant Leisenrig answered, admitting the allegations of the petition in regard to the ownership of the land by Lindsay, the recovery of the judgment by Paramore, the filing of the transcript thereof, the issue and levy of the execution, and sale and purchase by Paramore, and averred that he purchased said land of Paramore for the sum of $2,500, who conveyed the same to him by general warranty deed, and denied all the other allegations of the petition. The court found the issues for the defendant and dismissed the bill.

On the 15th of December, 1874, Paramore's judgment, a transcript of which was on that day filed in the office of the clerk of the Circuit Court of De Kalb County, became a lien on the undivided half interest of Lindsay in section 8. Lindsay, with his family, at that time, was residing elsewhere. In March, 1876, he first moved with his family upon the section, and then first occupied the house which he had previously built thereon as a home. His right of homestead exemption was then for the first time impressed upon the land which before that time he owned, but had never occupied as a homestead. The right of homestead which he then acquired by such occupancy was subsequent and subject to the prior lien of Paramore's judgment and could not be by him asserted against it. He had no homestead right, exempt from sale under the execution issued upon that judgment, which the sheriff could be required to set off before sale. The lien of the judgment, having attached to all his interest in the one undivided half of the section, could not be displaced or defeated by the subsequent occupation of it by him as a homestead. Elston v. Robinson, 21 Iowa, 531; 23 Iowa, 308; Thomp. Homest, secs. 241-246; Finnegan v. Prindeville, 83 Mo., 517. If, however, Lindsay had been entitled to a homestead exempt from sale under execution upon this judgment, and the sheriff failed to set it off, the sale would not have been void by reason of such failure. Crisp v. Crisp, 3 West. Rep., 215; 86 Mo., 630. The fee would pass to the purchaser, subject to his right of homestead (Black v. Curran, 81 U. S., 14 Wall., 463, 20 L. ed., 819), which right would not be in any manner affected by the sale; nor could the purchaser at such sale get possession of any part of the premises without setting off that homestead so long as it was occupied by him as such; and doubtless, having the right to have the same set off before sale, the failure of the officer to do so would afford the homestead occupant good ground for having the sale set aside at the return term of the execution. This right Lindsay proceeded to assert at the return term of the execution, but afterward withdrew his claim and abandoned the premises; and there is no question of homstead in the case.

The plaintiff claims that, upon the facts stated, he has a right to be subrogated to the lien which the St. Joseph Building Company had upon the land prior to Paramore's judgment lien, to the extent of the amount of money furnished by him to pay off that lien, with interest. It is not perceived upon what principle this contention can be maintained.

The loan of the $2,500 by plaintiff to Lindsay, the execution of the notes by him to the plaintiff and of the deed of trust to secure them, the payment of the money to the building company and its acceptance by the company may all be considered as parts of one transaction; and it may be conceded that the money was paid by the plaintiff through his agent at the request of Lindsay. Nevertheless, at the time the money was loaned and the payment made the plaintiff had no right or interest in the property, for the protection of which it became necessary that such payment should be made. By that payment he, for the first time, secured an interest in the land. That the parties had previously been negotiating in regard to the loan and to the payment of the building company's claim cuts no figure in the case. The plaintiff thereby acquired no interest in the land and subjected himself to no obligations in respect thereof. He was a stranger to any interest in the land up to the time he voluntarily made the payment. All the interest he ever acquired in the property he acquired by means of that payment; that was the consideration, and the sole consideration, of the notes executed by Lindsay and the deed of trust to secure their payment.

There is not a scintilla of evidence tending to show that the money paid to the company was for the purchase of their lien; and its release to Lindsay, while in the form of a quit-claim deed, states, in express terms, that it is in satisfaction of the deed of trust; and all the facts negative the idea that it was intended as an assignment.

There was no evidence tending to prove any agreement that the lien of the building company was to be kept on foot for the benefit of plaintiff. On the contrary, all the facts negative the idea that such was the intention of any of the parties to the transaction. The facts proven show that the plaintiff is not entitled to the subrogation that he prays for, either as of right or by convention. "The demand of a creditor which is paid with the money of a third person, without any agreement that the security shall be assigned or kept on foot for the benefit of such third person, is absolutely extinguished, but the doctrine of subrogation will be applied when the person claiming its benefit has been compelled to pay the debt of a third person in order to pro-

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tect his own rights or to save his own property." Sugd. Subr., sec. 3. The decisions in this State, as elsewhere, will be found in harmony with the principles here laid down. Wade v. Beldmeir, 40 Mo., 486; Wolff v. Walter, 56 Mo., 295; Wooldridge v. Scott, 69 Mo., 669; Price v. Courtney, 2 West. Rep., 458, 87 Mo., 387.

The debt due by Lindsay to the building company and the lien given to secure it were absolutely extinguished by the payment. Such was the intention of all parties to the transaction. The plaintiff relied, for security for the money he advanced, solely upon the deed of trust which he took at the time; and the sole ground upon which a court of equity is asked to intervene in his behalf in this case is the assumption that he would not have parted with his money to make the loan and payments if he had known in January that Paramore's judgment lien had attached to the premises in December. Why did not he know it? That judgment was spread upon the public records in order that all who might deal with the property might know of its existence. He was not prevented from examining the record or lulled into security by any representation of Paramore, Lindsay, or anybody else. He did not know simply because neither he nor his agent looked that he might see and know. That plaintiff's security was less valuable than he expected it would be when he made the loan was the result of his own negligence and not of the fault, wrong, or mistake of any other person. Against the consequences of that negligence—for which he has no one to blame but himself—a court of equity cannot relieve him by interfering with the legal rights of others who are without fault. The authorities cited by appellant and many others have been examined in vain to find any recognized equitable principle which would warrant the court in so doing. The relief which courts of equity are authorized to administer is to be measured by established and well-recognized principles and not by the "chancellor's foot."

This case has been treated as though the only real defendant in the case, Leisenrig, stood in the shoes of Paramore—a position, however, which is far from being sustained by the evidence.

NEW YORK COURT OF APPEALS.

ISABELLA CUMING
v.
THE BROOKLYN CITY R. R. CO.

Decided April 10, 1888.

A parent in an action for the loss of service of a child disabled by a tortious injury, may recover for prospective loss of service during the child's minority and expenses actually incurred for medicine or medical attendance, or which are immediately necessary to be incurred, but not for the value of contingent and prospective surgical services.

This action was for the loss of services of plaintiff's child, Bessie, who had recovered a verdict for $10,000, which has been affirmed by the Court of Appeals. On the trial before Mr. Justice Brown and a jury, at a Kings County circuit, a verdict was given for plaintiff for $5,500. The general term affirmed the judgment.

ANDREWS, J.—It seems to be the doctrine of the law of England that the right of a parent to maintain an action for an injury to his minor child, from the tortious act of a third person, is founded exclusively upon the loss of service, and that the parent has no remedy, even for expenses incurred, unless the child is old enough to be capable of rendering some act of service and the relation of master and servant, express or implied, exists between them. Grinnell v. Wells, 7 Man. & Gran., 1041; Addison on Torts, 902.

But when the action is maintainable on the ground of loss of service, then both by the law of England and of this country the parent may claim indemnity, not only for the actual loss of service to the time of the trial, but also for any loss of service during the child's minority, which, in the judgment of the jury and according to the evidence, will be sustained in the future, and for expenses necessarily incurred by the parent in the cure and care of the child in consequence of the injury. Cowden v. Wright, 24 Wend., 429; Drew v. Sixth Ave. R. R., 26 N. Y., 49; Dixon v. Bell, 1 Stark., 287; Schouler's Dorn. Rel., 351.

The English rule, which denies to the parent any remedy for medical or other expenses incurred in consequence of the injury to the child, except as incident to the loss of service, ignores the parental relation and obligation as an independent ground of recovery, although it may be manifest that the parent had sustained a pecuniary loss as the proximate result of the wrong. The court in Massachusetts, in the case of Dennis v. Clark (2 Cush., 347), held a more liberal and, as it seems to us, a more reasonable and equitable doctrine, and decided that when an infant residing with his father receives an injury such as would give the child a right of action the father who is put to necessary expense in the care and cure of the child may maintain an action for indemnity, although the child was, by reason of his tender age, incapable of rendering any service. This doctrine casts upon the wrongdoer responsibility for a pecuniary loss flowing from his wrongful act, actually sustained by the parent in the discharge of his parental obligation to care for and maintain his infant children.

But there is another phase of this question presented in the present case. The mother, the father being dead, brings her action founded upon loss of service for an injury to her minor child, and is permitted to recover not only prospective damages for loss of service during the fifteen years before the child will reach her majority, but also for surgical expenses which have not been in fact incurred, and the incurring of which is not presently necessary, but which, in the opinion of experts examined on the trial, it will become necessary to incur in consequence of the injury at some time during the child's minority. The trial judge, with a view to the ascertainment of this item of damages, permitted a surgeon, against the objection of the defendant, to testify that the expense of an operation, which, in his judgment, would become necessary at some remote period during the child's minority, would be $300. In other

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words, the jury were permitted to include as a part of the damages in the action the value of contingent and prospective surgical services.

The right of the parent in an action for loss of service of a child disabled by a tortious injury to recover for prospective loss of service during the child's minority is well settled. These damages are, however, of necessity, to a great extent speculative or conjectural. There are many contingencies which may deprive the parent of the services of a child, and even make the child a pecuniary burden to the parent, although the particular injury had not happened. The child may die from disease or other accident, or the parent may die. The prospective damages for loss of service, recoverable in such a case as this, may never in fact be sustained. But as only one action can be maintained against a wrongdoer for a single wrong, the law from necessity permits consequences not yet fully ascertained, but which are reasonably certain to happen, to be anticipated, and a jury is allowed to estimate the damages for future loss of service in the light of experience and of such evidence as can be given.

The damages allowed in this case for prospective surgical expenses have still another element of uncertainty. If recoverable by the parent, it must be upon the ground of the parent's obligation to maintain the child. But not only may the parent die or child die, thereby rendering the surgical expenses unnecessary, but the parent may become wholly unable to pay for the services if required, or the child may be treated in a hospital or at public expense, as was, in fact, the case in this instance, when the child's leg was amputated. There is adequate reason for permitting the parent to recover medical or other expenses actually incurred consequent upon an injury to the child from the wrongful act of a third person. In case of an injury to a minor child, whose parents are living, there is a double right of action—an action by the child and an action by the parent. In the child's action plainly there can be no recovery for expenses actually incurred by the parent, and so far a double recovery is prevented. But it is not so plain that the child may not recover as part of his damages all the proximate pecuniary consequences of his disability, including medical and other expenses as under the evidence the jury shall find it will be necessary in the future to incur. The denial of this right would in many cases deprive the child of the means of necessary relief. It cannot, I suppose, be doubted that, the parents being dead, all the future consequences of the injury and necessary expenses flowing from the disability would be proper element to be considered by the jury in an action brought by the child; nor is there much doubt that these considerations enter into every verdict rendered in an action brought by a minor for his personal injury. There is, perhaps, a logical difficulty in denying the right of the parent to recover the damages now in question, but the same difficulty attends a denial of the child's right. It appears by the record that the child has brought an action and has recovered her damages.

In the absence of controlling authority we are of opinion that in an action by a parent founded on loss of service of the child only expenses actually incurred by the parent for medicine or medical attendance, or which are immediately necessary to be incurred, are recoverable as incident to the main causes of action, and that future, prospective, contingent expenses of this kind are recoverable only in an action by the child. The parent, in an indirect way, is benefited by a recovery by the child, and this rule will be most likely to accomplish justice and prevent a double recovery in such cases. The obligation of parents to maintain and provide for their children has its most effectual sanction in the natural affections. The law at best can but imperfectly enforce it. It does not undertake to do so directly until children have become, or are likely to become, a public charge. The law of necessaries is so limited and guarded that the wants of children can only be supplied under this rule in exceptional cases. The legal obligation of maintenance and support resting on the mother is especially imperfect.

In all cases it necessarily can be enforced only in cases of the pecuniary ability of the parent, and in case of the mother the child's means are first chargeable with his support. Furman v. Vanlize, 56 N. Y., 435. A recovery in the child's action for a personal injury for prospective medical services, where the fund recovered is usually preserved through a guardian or in other ways, will be most likely to secure such services when needed. Whether in any view the attempt to fix a definite sum for contingent expenses which may never be incurred was not pushing the evidence further than is permissible need not be considered.

These views lead to a reversal of the judgment.

All concur.—*New York Daily Register.*

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

April 30.

11139. Mary J. Carney v. William Carney. Com. sol., W. K. Duhamel.

May 1.

11140. Mary J. Widney v. William A. Widney. For divorce. Com. sol., W. A. Cook.

11141. Dora L. Steele v. Marshall Steele. Com. sol., C. Carrington.

May 2.

11142. Frank W. Hill et al. v. Richard S. Hill et al. To sell. Com. sol., F. S. Hill.

May 5.

11143. Caroline E. Thomas, alleged lunatic. Upon petition of D. K. Stevens. To inquire into lunacy. Com. sol., F. Beall.

11144. William H. German et al. v. Huia W. De Postostad. To enforce mechanic's lien. Com. sol., Thomas and Duvall.

May 7.

11145. Louisa Cooper v. John H. Cooper et al. Creditor's bill. Com. sol., J. C. P. Greer.

CIRCUIT COURT.—New Suits at Law.

April 27.

28623. Robert I. Fleming v. Stilson Hutchins. Damages, $20,000. Plffs attys, Perry and Carlisle.

April 28.

28624. Michel et al. v. Wm. S. Crown. Account, $385.23. Plffs atty, W. K. Duhamel.

28625. Louis Rothschild v. Michael Lawler. Note and account, $384.75. Plffs atty, C. Bendheim.

May 2.

28626. George W. Maguire v. M. T. Server. Replevin. Plffs attys, Birney & Birney.

28627. William McGill v. Alex. Elliott, jr. Account, $2,750. Plffs atty, S. S. Henkle.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of May, 1888.

George W. Greason et al. v. Clarence Le Roy Palmer et al. } No. 11,109. Equity Docket 28.

On motion of the plaintiffs, by Mr. Thomas M. Fields, their solicitor, it is ordered that the defendants, Thomas Greason (Greacen), (1) John Greason (Greacen), (2) John Greason (Greacen), Safe Deposit and Trust Company of Baltimore, Joseph Henry Davidson, and Robert Andrew Davidson (for whom summonses have been duly issued and returned not to be found), cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is the substitution of a trustee to carry out the trusts created by the will of William Greason.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
19 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John J. Taylor**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of April, 1888.

CAROLINE TAYLOR, Ex'x, 1152 16th st. n. w.
19 No. 3052. Ad. D. 14. M. M. Holland, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Drill**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1888.

her
MARY ANN ⋈ DRILL, Ex'x, 1249 32d st. n. w.
mark
18 No. 3032. Ad. D. 14. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrecia B. Peters v. Isaiah P. Brooks et al. } Equity. No. 10,270.

The Trustees, Randall Hagner and Andrew B. Duvall, appointed in this cause, having reported the sales of the following property, to wit, south half of the east half of lot 57, in Wright and Cox's subdivision of part of Pleasant Plains, unto Conrad Roeben, at and for $700.00, and the west half of lot 58, in said subdivision, unto W. Clarence Duvall, at and for the sum of $1,615.00, it is thereupon, this 25th day of April, A. D. 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of May, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named day.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
18 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 28th day of April, 1888.

Henrietta F. Ritter v. Benjamin Tilley et al. } No. 10,869. Docket 27.

On motion of the plaintiff, by Mr. H. B. Moulton, her solicitor, it is ordered that the defendants, Susan W. Tilley, William J. Tilley, Susan E. Warner, Mary G. Warner, Kate S. Warner, and Susan J. Warner, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is a judgment creditor's bill and to set aside fraudulent deeds.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
18 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 27th, 1888.

In the matter of the Estate of **Ludolph Friederich**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by Mary E. Mills.

All persons interested are hereby notified to appear in this Court on Friday, the 25th day of May next, at eleven o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
19 Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of April, 1888.

Edward F. Beale et al. v. Gertrude Wheeler et al. } No. 9,937. Equity Docket 25.

James H. Saville, trustee in this cause, having reported a sale of lots 28 and 29, in trustee's subdivision of lot 1, in square 491, and also all the right and title of the parties hereto in and to parts of lots 1 and 24, in same square, lying immediately north of said lots 28 and 29, to George N. Beale, Mary E. Beale, Mary E. Read, and the heirs of Truxtun Beale, deceased, for the sum of $31,000, it is, this 12th day of April, 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of May, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
16 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of May, 1888.

James Heany v. Mary Ann Heany. } No. 11,093. Equity Docket 28.

On motion of the complainant, by Mr. J. G. Bigelow, his solicitor, it is ordered that the respondent cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree divorcing the complainant from the bond of matrimony with the respondent on the grounds, among others, of willful desertion for more than the uninterrupted period of two years.

Provided this order shall be published once a week for three successive weeks in the Washington Law Reporter, and the first insertion thereof shall be forty days before said rule-day.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
19 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of May, A. D. 1888.

George H. Plant, Plaintiff, v. Stephen D. Castleman, Defendant. } No. 11,096. Equity Docket 28.

On motion of the plaintiff, by Mr. Perry, his solicitor, it is ordered that the defendant, Stephen D. Castleman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to specifically enforce the contract of copartnership averred to exist between the plaintiff and the defendant for the carrying of the mails of the United States over certain mail-routes specified in Exhibit B of the bill filed in the said suit, and for an injunction to restrain the defendant from receiving moneys from the United States in connection with the said contracts, and for a receiver to collect the said moneys and to perform the said contracts.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
19 By H. W. HODGES, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of May, 1888.

Rosina M. Parnell v. Nannie L. Smith et al. } No. 11,128. Docket 28.

On motion of the plaintiff, by Messrs. Edwards & Barnard, her solicitors, it is ordered that the defendants, Ann E. Bidwell, Guy R. Kennedy, and Joseph J. F. Kennedy, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee in place of Joseph C. G. Kennedy, deceased, and to foreclose deed of trust on lot 58, of Peters et al. addition to Georgetown, D. C.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
19 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of May, 1888.

Emma Johnson v. John H. Cook, jr., et al. } No. 11,119. Equity Docket 28.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendants, John H. Cook, jr., and Joseph T. Settle, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the deed of trust dated on the 3d day of June, 1872, and recorded in liber 691, folio 164, the same having been given by Emma Johnson and her husband to John H. Cook, sr., now deceased, as Trustee to secure defendant Settle in the sum of $250.00.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
19 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 4th, 1888.

In the case of Joseph Fitzgerald, Administrator of Matthew H. McWhorter, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
19 No. 2703. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Margaret Campbell, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of April, 1888.

TH. E. WAGGAMAN, Adm'r, 917 F. st. n. w.
19 No. 3064. Ad. D. 14. Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of May, 1888.

Patrick O'Dea et al. v. Mary O'Dea Brown et al. } No. 11,087. Equity Docket 28.

On motion of the plaintiffs, by Mr. Thomas M. Fields, their solicitor, it is ordered that the defendant, Ellen O'Dea (for whom a summons has been duly issued and returned "not to be found") cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is partition of sale of lot 46 in square 719.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
19 By H. W. HODGES, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 4th, 1888.

In the case of John W. Lee, Administrator c. t. a. of Maria Miles, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 1st day of June, A. D. 1888, at eleven o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
19 No. 2567. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity, this second day of May, 1888.

William Syphax et al. v. John F. Cook et al. } In Equity. No. 11,100.

On motion of the plaintiffs, by H. Randall Webb, their solicitor, it is ordered that the defendants Andrew F. Slade, Jesse B. Slade, and Maria L. Mason, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this cause is to establish the rights of the lot holders of the Columbian Harmony Cemetery.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
19 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William J. Miller, Trustee, v. Gorham P. Hopkins et al. } 6,340. Equity Docket 18.

The Trustee having reported to the Court that he sold the east half of lot seven, in reservation D, at $2,725, it is, this 30th day of April, A. D. 1888, ordered and decreed that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the first (1st) day of June next.

Provided a copy of the above order be published in the Washington Law Reporter once a week for three weeks before said first day of June.

By the Court. W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
19 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of May, 1888.

William H. Thomas v. Virginia Thomas } No. 11,060. Equity Docket 28.

On motion of the plaintiff, by Mr. R. S. Smith, his solicitor, it is ordered that the defendant, Virginia Thomas, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto, and further, that the plaintiff may have the care and custody of their children. The ground for said dissolution of said bond of matrimony is adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
19 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John H. Ketcham v. The Prest. and Directors of Geo'town College. } No. 7,897. Equity.

On consideration of petition of Oella Chappel, it is, this 8th day of May, A. D. 1888, ordered: That the Trustee, Henry D. Cook, junior, show cause, if any he has, on or before the first rule-day occurring forty days after this date, why a new trustee should not be appointed in his place and stead.

Provided a copy of the petition be mailed to said Cook and a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said rule-day.

By the Court. Test: W. S. COX, J.
A true copy. R. J. MEIGS, Clerk.
19 By H. W. HODGES, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Travis B. Pinn**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of April, 1888.

SUSIE E. PINN, Adm'x, 1135 6th st. n. w.

18 No. 3054. Ad. D 14. R. S. Smith, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **George Rupli**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of April, 1888.

JULIUS HUGLE, Adm'r, 915 La. av. n. w.

18 No. 3066. Ad. D. 14. Wm. B. Lord, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Ellen French**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

WILLIAM BRITT, Adm'r, Tenlytown, D. C.

18 No. 3065. Ad. D. 14. F. W. Jones, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Mary J. Rutherford**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of April, 1888.

JAMES A. RUTHERFORD, Adm'r, 501 F st. n. w.

18 No. 3046. Ad. D. 14. Chas. A. Elliot, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Robert M. Miller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of April, 1888.

ANN MILLER, Adm'x, 521 4½ st. s. w.

18 No. 3063. Ad. D. 14. Milton Barnard, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Martha R. Anderson }
v. } 9672. Equity Docket 25.
Philip T. Ferris et al. }

The Trustee in the above-entitled cause having reported to the Court that he has sold the real estate referred to therein to Mr. Willis Worster, of Washington city, D. C., for the sum of one dollar and seventy-five cents per square foot, and that the whole amount of the purchase-money, amounting to $6,769.00, has been paid: ordered that said sale be, and the same is hereby, confirmed, unless objections to the same shall be filed within thirty days from the date hereof.

Provided a copy of this order be published once a week for three successive weeks prior to June 1st, 1888, in the Washington Law Reporter.

W. S. COX, J.

A true Copy. Test: R. J. MEIGS, Clerk,
18 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 27th, 1888.

In the case of John S. Butler, Executor of **Francis Madison**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

18 No. 1451. Ad. D. 10. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 27th, 1888.

In the case of Agnes Mc. Stewart and John Stewart, Executors of John Stewart, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

18 No. 2651. Ad. D. 13. Irving Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

April 25th, 1888.

In the case of Stanislaus F. Ryan, Executor of **Patrick J. Ryan**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 25th day of May, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to said day.

Test: DORSEY CLAGETT, Register of Wills.

18 No. 2590. Ad. D. 13. Eugene Carusi, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Phillip Biegler**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1888.

PHILIP F. BIEGLER,
Ex'r, 1201, cor. 12th and E sts. s. e.

18 No. 3012. Ad. D. 14. W. K. Duhamel, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **John A. W. Waters**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of April, 1888.

MARGARET T. WATERS,
Adm'x c. t. a., 1322 33d st. n. w.

18 No. 3022. Ad. D. 14. F. W. Jones, Proctor.

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Solicitor of Patents and Counsel in Patent Cases.

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WM. STONE ABERT, - - - - - Editor

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WASHINGTON, D. C. - - - - - MAY 23, 1888

Trial by Jury—The Uncertainty of the Law.

Necessarily law is not an exact science. The seeming frequency with which the higher tribunals set aside the rulings of the subordinate courts is misleading. A judge at *nisi prius* is, without consideration, and without thorough argument, compelled to decide the gravest questions of law, which become part of the record. No judge is equal to this without error. Of the cases so passed upon 20 per cent. are perhaps reviewed in the higher courts, and of these, say in 20 per cent., of his hasty rulings are held erroneous on full argument and ample consideration. This would make the sum of four reversals in one hundred cases.

In our own judicial experience, of the cases passed upon by the General Term 5 per cent. may be taken to the Supreme Court of the United States, and of these perhaps 5 per cent. or more are reversed.

It is thus seen that the decisions of the courts are not frequently reversed. As a rule they are not. The uncertainty of the law is due mainly to the uncertainty of the facts, the most elusive, delusive, and illusive things with which men are obliged to deal, and those involved in the trial of cases usually depend upon human testimony. The nature of the subject to be inquired of and the means for conducting the inquiry render it the most difficult and the least satisfactory of all the labors of men.

For the ascertainment of the facts of a given case a jury is employed and is a most important part of a *nisi prius* court. As to eligibility to this responsible post, the law is satisfied with bare citizenship—a man is a juror because he is a citizen. Like the Athenian *dicasts* of the *dicastery* courts established by Pericles to aid in his war on the Athenian aristocracy, a man is a juror because he is a citizen, the only purely democratic feature of the American system of government. Whoever seriously thinks of abolishing the jury element of our judiciary, would do well to consider the very great popular interest and importance the presence of juries alone imparts to our courts.

Let him attend the trial of an important case in the Circuit Court, with the court-room thronged, and reporters taking notes, and later hear the same case, when the law is reviewed by a full bench of the General Term, if he would understand the import of this single consideration, one of many to take account of.

If familiar with the general interest in a *nisi prius* trial, let him go almost any day to the room of the United States Supreme Court, where the gravest cases are usually finally tried, in the presence of opposing counsel, the officers and pages of the court alone, or let him go from the thronged galleries of the House, where the Government of the Republic resides, past the drowsy Supreme Court, to the revising balance, the nearly as drowsy Senate, if he would estimate the value of this democratic element in the administration of law by the courts.

With the presence of the citizens the labor of securing the jury for a given case has but begun. Often as much time is spent in the preliminary trials of proposed jurors as should be necessary for the trial of the case. The law requires the mental condition of indifference to the result in each candidate for the post of trier, dependent, of course, upon the choice of the parties to the suit. Selection by them is through the medium of objection alone. The labor is to ascertain the existence of this mental bias. As a general rule knowledge of any of the facts is accepted as conclusive of that; so that ordinarily the more important a case is the more widely known and discussed, the more ignorant and obscure the candidate must be to secure an election as a juror. True enough, the oath of the candidate himself that he is indifferent is legally conclusive of the question; yet few can be found, who, admitting knowledge of the facts, will still insist that they have no resulting impression.

Why should a knowledge of the facts, or even a resulting impression, exclude a man from sitting as a trier in the absence of a legal rule to that effect? Anciently there was no such rule. Jurors came from the *vicinage*, and because they did know more or less of the facts—knew and were known by the parties; and when the venue was changed it was not because the jurors knew all about the case, but because they were so prejudiced against or for one of the parties that a fair trial could not be had in the county where it arose.

Why should not the rule of exclusion, deemed necessary in the case of the judges of the facts, apply with equal force to the judges of the law? Why may not the last be inquired of if he has not formed and expressed an opinion of the merits of the case? Why should he not bring to the trial the mental condition of indifference?

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True, he judges the law and is presumed to know *all* the law that can be involved, and, so far as the facts are known, has inevitably prejudged it. Why should it not be a condition precedent to his sitting in a given case that he has no preconceived notions of the law involved? Yet the presumption of the law is that the better and more thoroughly a man understands the law the more certainly is he competent to apply it justly, while the more ignorant he, or any man is, at the beginning of a trial, of the facts the more certainly he will arrive at a just judgment of their value and sum total.

It is true there is now a beginning of the application of the same rule of exclusion to judges as to jurors. A law of Congress now precludes one of our judges who tries a case in the circuit or court of equity from afterward sitting in the General Term in the same case, and this because, like a candidate for juror, he has made up his mind; in fact, knows very much about the case. If a case at law, he knows more about it than any other judge ever can, for he saw and heard the witnesses and fully apprehended and appreciated the spirit and atmosphere of the case, which never was and never will be transferred to a record. If having once sat in it precludes his sitting at the rehearing, then should all the judges who heard a given case be excluded from sitting again when a motion for rehearing has prevailed. Indeed, why should they pass upon the motion itself?

It is to be remembered that on the first hearing of a given case the argument of questions of law are never thorough and reflected upon, nor does the judge make up his own final decision. All the traditions of the bar as the training of its members inculcate that lawyers and courts are free to revise their own half or fully formed opinions on the production of further authorities and new arguments. Upon this rests the usage of ordering reargruments *sua sponte* or on motion. Under our former practice it was not very rare that the justice who pronounced the judgment below delivered the opinion of the General Term reversing it. There really is no good reason for the present legislative rule, and its existence works greater inconvenience and mischief than is or can be cured by it.

Difficult as is the law the ascertainment of the facts is often more difficult. For the ascertainment of the first we have a specially trained body of men. For the ascertainment of the second we have established and enforce rules that compel the employment of men the least qualified for intellectual labor of any kind, and often that is the sole ground of their appointment to this duty in given cases.

Ought a previous knowledge of the facts involved in a given case, and a consequent admitted mental bias, of themselves to exclude the election of a proposed candidate to the office of juror to try it? A more important question in the administration of justice, especially in courts for the trial of persons indicted for crime, can hardly be asked. It is one that I propose to consider in another brief paper.

A. G. R.

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

THE UNITED STATES
v.
CHARLES W. BEEBE ET AL.

Decided April 30, 1888.

1. The Attorney-General has authority to institute a suit in the name of the United States to set aside and cancel a patent alleged to have been obtained by fraud or mistake where the Government has a direct interest or is under an obligation respecting the relief invoked.
2. The United States are not bound by any statute of limitations nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign government to enforce a public right or to assert a public interest; but the rule is otherwise where the Government is only nominally plaintiff, has no real interest in the litigation, and has allowed its name to be used therein for the sole benefit of a private person.

This is a suit in equity brought by the Attorney-General on behalf of the United States to set aside and cancel certain patents issued in favor of Roswell Beebe, in 1838 and 1839, for about 480 acres of land upon which the present city of Little Rock, Arkansas, is partly built. Roswell Beebe having died many years ago, this suit is prosecuted against his heirs and legal representatives. It was brought in the United States Circuit Court for the Eastern District of Arkansas, the bill having been filed on the 31st of January, 1883. The ground upon which it is asked that said patents may be set aside and canceled is that at the date of their issue, and for a long time prior thereto, the United States did not own the land embraced in them, but that, on the contrary, said land was legally appropriated by other persons, and was therefore segregated from the public domain; that said Roswell Beebe and others fraudulently conspired together for the purpose of securing said patents, and by false representations, pretenses, and undue influence persuaded and "coerced the register" of the United States land office at Little Rock into the belief that he (Beebe) was entitled to said patents, &c.; and that by reason of said premises said patents are fraudulent and void.

The bill sets out at considerable length and with much regard to details a great array of alleged facts connected with the issue of said patents; the former appropriation of the land, and the alleged fraudulent acts and practices of said Beebe with reference to said land. In sub-

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stance they are as follows: That said lands were formerly a part of the Quapaw Indian reservation, but were ceded to the United States by the treaty of August 24, 1818, and thereby became part of the public domain; that afterward, to wit, in 1819 and 1820, they, with other lands not involved in this controversy, were located with what is known as "New Madrid certificates," issued by the recorder of land titles at St. Louis in November, 1815, under and in accordance with the provisions of the act of Congress approved February 17, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes" (3 Stat., 211); that by virtue of said locations all of said lands were surveyed, and the surveys were returned to the recorder on the 17th of October, 1820, whereby said lands became legally appropriated by the holders and owners of said certificates, and thus severed from the mass of the public domain; that the equitable title to said lands thus became vested in the locators of said certificates and their assigns, and was afterward, by proper assignments and conveyances, transferred to and became vested in one W. M. O'Hara, who subsequently conveyed the lands in undivided moieties to Nathaniel Philbrook and Chester Ashley; that in 1824 said Philbrook died intestate, seized and possessed of an undivided half interest in said lands held under the title aforesaid, and the same descended to his father, Eliphalet Philbrook, a citizen of New Hampshire, and his sole heir at law, who, dying in 1828, by last will and testament devised all of his interest in and to said lands to Thomas H. Ellison and six of his other children and grandchildren; that said devisees and heirs of such as are deceased have, by proper deeds, conveyed said lands to George V. Dietrich, Jabez C. Hurst, citizens of Galesburg, Illinois, and John F. Calder, a citizen of Troy, New York, in trust to apply for and obtain patents thereto from the United States; that said trustees applied to the United States recorder of land titles at St. Louis, Missouri, for patent certificates in support of said original "New Madrid" locations, and, on the 10th day of September, 1875, that officer issued such certificates in the names of the original locators and their legal representatives for said lands, as he was authorized to do by the said act of February 17, 1815; that afterward said trustees made application for patents for said lands to the proper United States authorities, but that such patents were refused because of the existence of the outstanding patents issued to said Beebe as aforesaid; that from the time of said locations, surveys, and returns in 1819 and 1820, up until the issuance of the Beebe patents in 1838 and 1839, the said New Madrid locations were the only titles to said lands, and under them the town of Little Rock was laid out and built on said lands, was duly incorporated, and contained hundreds of inhabitants prior to and at the time when said patents were issued; that said Beebe patents were issued on certain pre-emption float claims, all located about the year 1838, under the provisions of the second section of the pre-emption act of May 29, 1830, and the amendatory act of July 14, 1832 (4 Stat., 420, 603), but that such pre-emption locations were fraudulent and void, because the lands had already been appropriated by the New Madrid certificates, were at that time occupied and improved by actual settlers, and were consequently not subject to pre-emption; that said Beebe never procured the consent of said settlers to the location of said pre-emption floats and the issue of said patents, as required and provided by the said pre-emption acts and the regulations of the General Land Office, but, on the contrary, imposed upon the officers of the Land Department and induced them to believe that he had complied with the law and the regulations in every respect, when, in fact, his every act in procuring said patents was done in violation of law and was part of a conspiracy to defraud the United States and the holders under said New Madrid locations, and that in furtherance of said conspiracy said Beebe entered into a so-called bond to convey to the original holders and claimants of said lands the title which he was to and did acquire by the issue of said patents on said float claims, which he afterward fraudulently failed and refused to do, all of which was a fraud on the United States and other claimants to, and settlers upon, said lands; that all defects of the said New Madrid act and of the locations thereunder have been cured by subsequent acts of Congress and the opinions of the Attorney-General, and decisions of the Department, and by decisions of the Supreme Court of the United States construing the same, and that said locations of said floats and the issuance of said Beebe patents were allowed under a misconception of the law, procured by undue means and in violation of the law, and the same are null and void, and ought in equity and good conscience to be canceled.

The defenses relied on in the court below, by way of demurrers and pleas, were (1) the want of authority in the Attorney-General to file a bill for the annullment of a patent in a case like the present; (2) that the claim is barred by the statute of limitations; (3) that the claim sued upon is stale; (4) that the plaintiff has no equity to maintain this suit; and that all this appears upon the face of the bill itself. The demurrer to the bill was sustained and the bill dismissed, from which decree of dismissal an appeal on behalf of the United States brings this case here.

Mr. Justice LAMAR delivered the opinion of the court.

The points involved in the pleadings and made before the court below have been presented and urged with much earnestness, both in the brief and in the oral argument of counsel.

First. As to the right of the Attorney-General to bring this suit.

The authority of the Attorney-General under the Constitution and laws of the United States to institute a suit in the name of the United States to set aside a patent alleged to have been obtained by fraud or other mistake, whenever denied by a specific pleading before this court, has been uniformly maintained. And it may now be accepted as settled that the United States can properly proceed by bill in equity to have a judicial decree of nullity and an order of cancellation of a patent issued in mistake or obtained by fraud where the Government has a direct interest or is under an obligation re

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specting the relief invoked. (See the opinion of the court, delivered by Mr. Justice Miller, in San Jacinto Tin Company v. The United States, decided this term of the court.)

Even if it had not been thus authoritatively settled it would have been difficult, upon principle, to reach any other conclusion. The public domain is held by the Government as part of its trust. The Government is charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation, and, under certain circumstances, to invest the individual citizen with the sole possession of the title which had till then been common to all the people as the beneficiaries of the trust. If a patent is wrongfully issued to one individual which should have been issued to another, or if two patents for the same land have been issued to two different individuals, it may properly be left to the individuals to settle by personal litigation the question of right in which they alone are interested. But if it should come to the knowledge of the Government that a patent has been fraudulently obtained, and that such fraudulent patent, if allowed to stand, would work prejudice to the interests or rights of the United States, or would prevent the Government from fulfilling an obligation incurred by it, either to the public or to an individual, which personal litigation could not remedy, there would be an occasion which would make it the duty of the Government to institute judicial proceedings to vacate such patent.

In the case before us the bill avers that the patents whose cancellation is asked for were obtained by fraud and imposition on the part of the patentee, Beebe. It asserts that there exists on the part of the United States an obligation to issue patents to the rightful owners of the lands described in the bill; that they cannot perform this obligation until these fraudulent patents are annulled, and that they therefore bring this suit to annul these fraudulent instruments whose existence renders the United States incapable of fulfilling their said prior obligation.

The court below held that the bill in this case having been filed on the recommendation of the Secretary of the Interior for the declared purpose of having the questions which were being pressed upon the Land Department in connection with the claims of the Philbrook heirs against the Government determined by the judicial department, which claims were unsettled and important, the appeal to the court was proper. In this we think the learned judge is in full accord with the principle laid down by Mr. Justice Miller in the San Jacinto case and within the following language of the court in Hughes v. The United States (4 Wall., 236), which was a suit brought in the name of the United States to set aside a patent for the benefit of a private citizen entitled to the land covered by said patent. Mr. Justice Field, who delivered the opinion of the court, speaking of the patent to Hughes, said: "Whether regarded in that aspect or as a void instrument, issued without authority, it *prima facie* passed the title, and therefore it was the plain duty of the United States to seek to vacate and annul the instrument, to the end that their previous engagement be fulfilled by the transfer of a clear title, the one intended for the purchaser by the act of Congress." Unless, therefore, it appears on the face of the bill that the claim set up has no equity or that there are valid defenses to the suit, the jurisdiction of the court to entertain it cannot be denied.

Next, as to the defense of the statute of limitations, laches, and lapse of time. The grounds on which the court below sustained the demurrer was (1) that, distinct from and independent of the statute of limitations and the laches of the public officers of the Government, the lapse of time constitutes a good defense to this suit upon those principles of equity which would be administered as between two citizens litigating in this tribunal, and (2) that the United States is bound by the same law.

The counsel for the complainant maintain that this conclusion, upon which the decree of dismissal rests, is erroneous and contrary to the decisions of this court and of every circuit and district court in the United States.

The principle that the United States are not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign government to enforce a public right or to assert a public interest is established past all controversy or doubt. (United States v. Nashville, &c., Railway Company, 118 U. S., 125, and cases there cited.) But this case stands upon a different footing and presents a different question. The question is, are these defenses available to the defendant in a case where the Government, although a nominal complainant party, has no real interest in the litigation, but has allowed its name to be used therein for the sole benefit of a private person?

It has been not unusual for this court, for the purposes of justice, to determine the real parties to a suit by reference, not merely to the names in which it is brought, but to the facts of the case as they appear on the record. Thus, in the case decided at this term, *in re* Ayers (123 U. S., 492, 493), the court held that the State of Virginia, though not named as a party defendant, was the actual party in the controversy. Mr. Justice Matthews, who delivered the opinion, said: "It is, therefore, not conclusive of the principal question in this case that the State of Virginia is not named as a party defendant. Whether it is the actual party . . . must be determined by a consideration of the nature of the case as presented on the whole record." So in the cases of New Hampshire v. Louisiana and New York v. Louisiana (108 U. S., 76) the court looked behind and through the nominal parties on the record to ascertain who were the real parties to the suit. Chief Justice Waite, in delivering the opinion of the court, used the following language: "No one can look at the pleadings and testimony in these cases without being satisfied, beyond all doubt, that they were in legal effect commenced, and are now prosecuted, solely by the owners of the bonds and coupons. . . . The bill, although signed by the Attorney-General, is also signed and was evidently drawn by the same counsel who prosecuted the suits for the bondholders in Louisiana, and it is manifested in many ways that both the State and the Attorney-General are only nominal actors in the proceeding. The bondowner, whoever he may be, was the pro-

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moter and is the manager of the suit. . . . And while the suits are in the names of the States they are under the actual control of individual citizens and are prosecuted and carried on altogether by and for them."

In the case of The United States v. Nashville, &c., Railway Company, *supra*, in which it was decided that the statute of limitations of the State of Tennessee was no defense to an action of the United States upon certain negotiable bonds held by them for public use, Mr. Justice Gray is careful to say, "This case does not present the question what effect the statute may have in an action on a contract in which the United States have nothing but the formal title, and the whole interest belongs to others;" and cites Maryland v. Baldwin (112 U. S., 490); Miller v. The State of Alabama (38 Ala., 600).

In the former case it was held that a suit in the name of a State for the benefit of parties interested is to be regarded as a suit in the name of the party for whose benefit it is brought. Mr. Justice Field, delivering the opinion of the court, said: "The name of the State is used from necessity when a suit on the bond is prosecuted for the benefit of a person interested, and in such cases the real controversy is between him and the obligors on the bond;" and the case was decided upon a consideration of the merits as if the party interested was alone named as plaintiff. And he cited, approvingly, the following language in McNutt v. Bland (2 How., 9): "As the instrument of the State law, his (the Governor's) name is in the bond and to the suit upon it, but in no just view . . . can he be considered a litigant party. Both look to things, not names—to the actors in controversies and suits, not to the mere forms or inactive instruments used in conducting them in virtue of some positive law."

In Miller v. The State, the other case cited by Mr. Justice Gray, the court said: "As laches is not to be imputed to the Government, the statute of limitations does not apply to the State unless it be clear from the act that it was intended to include the State. . . . In our opinion the rule that the statute of limitations does not run against the State has no application to a case like the present, when the State, though a nominal party on the record, has no real interest in the litigation, but its name is used as a means of enforcing the rights of the third party, who alone will enjoy the benefits of a recovery."

In Moody v. Fleming (4 Ga., 115, 118), which was a case where a party was applying for a mandamus in the name of the State, the court said: "It is insisted that here the State is a party moving the contest and setting up a right to have this survey certified, and that the tenant will not be protected by his possession, because the statute of limitations does not run against the State. We have decided, and the decision is sustained by unbroken masses of authority, that the statute of limitations does not run against the State. The answer, however, to this argument is this: The State of Georgia is not the real party to the proceeding. . . . The process is in the name of the State, but the right asserted is a private right; the issue is between two of the citizens of the State."

Applying these principles to this case, an inspection of the record shows that the Government, though in name the complainant, is not the real contestant party to the title or property in the land in controversy. It has no interest in the suit and has nothing to gain from the relief prayed for, and nothing to lose if the relief is denied. The bill itself was filed in the name of the United States and signed by the Attorney-General on the petition of private individuals, and the right asserted is a private right, which might have been asserted without the intervention of the United States at all.

In his letter to the United States district attorney upon the subject the Attorney-General directs that that officer shall sign his (the Attorney-General's) name to the bill, when the attorneys for the petitioners shall present such a bill, and file the same in the proper court, and that after the suit is commenced these attorneys for the petitioners will have the management of the case. Accordingly the subsequent proceedings in the case have been conducted exclusively by these attorneys, who, in the pleadings, describe themselves as attorneys for the petitioners and beneficiaries of the suit.

We are of the opinion that when the Government is a mere formal complainant in a suit, not for the purpose of asserting any public right or protecting any public interest, title, or property, but merely to form a conduit through whom one private person can conduct litigation against another private person, a court of equity will not be restrained from administering the equities existing between the real parties by any exemption of the Government designed for the protection of the rights of the United States alone. The mere use of its name in a suit for the benefit of a private suitor cannot extend its immunity as a sovereign government to said private suitor, whereby he can avoid and escape the scrutiny of a court of equity into the matters pleaded against him by the other party, nor stop the court from examining into and deciding the case according to the principles governing courts of equity in like cases between private litigants.

These principles, so far as they relate to general statutes of limitation, the laches of a party, and the lapse of time, have been rendered familiar to the legal mind by the oft-repeated enunciation and enforcement of them in the decisions of this court. According to these decisions courts of equity in general recognize and give effect to the statute of limitations as a defense to an equitable right, when at law it would have been properly pleaded as a bar to a legal right. They refuse to interfere to give relief when there has been gross negligence in prosecuting a claim or where the lapse of time has been so long as to afford a clear presumtion that the witnesses to the original transaction are dead and the other means of proof have disappeared.

We think the court below justly and wisely applied the principle to the case under consideration in sustaining the demurrer and dismissing the bill. The rights of the Philbrook heirs, the real parties to this case, which are set up in this bill, originated in 1815. The acts of Beebe perpetrating the alleged fraud were prior to 1838. The alleged illegal action of the Land Department occurred in 1839. More than forty-five years ago the complainants in this bill could

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have instituted their action. The death of the parties charged with fraud, and also of most, if not all, of the witnesses having personal knowledge of the transaction, the fact that a city has been built upon the land in question, the occupation of large portions of it by hundreds of innocent purchasers, the homesteads of many families covering other portions of it, the uninterrupted possession maintained for more than a generation, all resting upon faith in the patent issued by the United States Government, constitute reasons more than sufficient for the refusal of the court to set aside such patent at the suit of a party who has so long slept upon his alleged rights. For the reasons herein stated the decree of the court below is affirmed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

WILLIAM B. MOSES v. GEORGE TAYLOR.

No. 24,547. LAW.

Decided February 20, 1888.

The CHIEF JUSTICE and Justice COX sitting.

1. Where one receives certain bonds and contracts for "the safe return of said bonds" his obligation is to return the identical bonds and not an equivalent amount in similar bonds.
2. Goods delivered with the understanding that the bailee may at his option appropriate them to his own use and pay their value is a bailment convertible into a sale at the option of the bailee; and when they are so converted the original bailor may sue in assumpsit for goods sold and delivered.
3. In such an action the statute of limitations would seem to run only from the date of the conversion.
4. In trover the conversion is shown by proof of a demand and refusal, and limitations run only from the date of such demand.
5. In cases of conversion by a wrongful sale of property the owner may waive the tort and sue in assumpsit for goods sold and delivered; in which case limitations run from the date of the sale.
6. While an action of trover cannot be converted by amendment into an action of assumpsit, yet where the declaration has a double aspect, being partly in trover and partly in assumpsit, it is not error to permit the plaintiff to strike from his declaration the objectionable features so as to make it applicable to but one form of action.
7. In a declaration containing the common counts only the plaintiff need not file a bill of particulars unless required so to do by the defendant.
8. The bill of particulars when filed becomes a part of the declaration, and the evidence is limited to its items. Plaintiff may, however, file more than one bill, so as to have one applicable to each of the common counts.
9. If the action be assumpsit the fact that the bill of particulars is applicable only to a declaration in trover does not change the character of the action.
10. Where the declaration is filed in time, but is afterward amended, not to introduce a new cause of action, but simply to correct a defective count, the statute of limitations cannot be pleaded thereto.
11. The rule that more than one counter pleading may be filed is limited to the plea; it does not extend to the replication.
12. Where a demurrer is overruled and the party pleads over instead of appealing he thereby waives his demurrer and cannot afterward have the court's ruling thereon reviewed on appeal from the final judgment.
13. An application to amend the pleadings after the jury is sworn is addressed to the discretion of the court and is not the subject of review in an appellate court.
14. To a plea of limitations the plaintiff may reply that the cause of action was fraudulently concealed from him and that he did not discover it until within three years before the commencement of suit.
15. An implied assumpsit may be revived by a new promise so as to defeat the bar of the statute of limitations.
16. In a case of bailment the bailee cannot dispute the title of his bailor, except under certain circumstances, such as that the property was recovered from him by a better title or that he had voluntarily surrendered it to one having a better title.

Motion by defendant for a new trial on a bill of exceptions.

The facts are sufficiently stated in the opinion of the court.

GEORGE S. BOUTWELL and ROBERT CHRISTY for defendant.

COLE & COLE and WILLIAM A. COOK for plaintiff.

Mr. Justice COX delivered the opinion of the court.

This case presents quite a complicated record, and it was argued with great ability and with a great display of learning, principally on questions of a technical character. It would be impossible within any reasonable space of time to review the vast number of authorities that have been cited, and we shall only state some general conclusions.

The suit was brought on the 13th of June, 1883. The original declaration contains three counts. In the first one the plaintiff sets forth, in substance, that prior to the 22d of January, 1881, at the special instance and request of the defendant, the plaintiff loaned him fourteen 7 per cent. permanent improvement bonds of the District of Columbia of the denomination and par value of $1,000 each, and that the defendant afterward executed his receipt bearing date the 22d day of January, 1881, whereby he certified that he had received from the plaintiff, as a matter of accommodation to him, the said defendant, fourteen one-thousand-dollar District of Columbia 7 per cent. permanent improvement bonds, and that the defendant held himself personally responsible to the plaintiff for the safe return of the bonds. Then it goes on to aver that, although the plaintiff has frequently since the 22d of January requested and demanded of the said defendant the return to him of the said bonds he has failed and refused to make the return, and still fails and refuses; but, on the contrary, has sold the same and converted the money to his own use. And the plaintiff avers that the said bonds, at the time of the sale and conversion thereof by the defendant were worth 21 per cent. premium, and that said bonds were and are worth the sum of $16,940.

The second count was simply a special count on a small note of $277.50, which, as subsequently appears, was for the amount of unpaid interest on the same bonds that had accrued up to the 1st of January, 1881.

The third count contains the consolidated

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common counts for goods sold and delivered, for work done and material provided, and the money counts. The claim with which the declaration winds up is:

"And the plaintiff claims $17,217.50, with interest thereon at the rate of 6 per cent. per annum from 1st day of January, 1881, until paid, according to the particulars of demand herewith filed, besides costs."

The particulars of demand are:

"For one note described in the foregoing declaration, $277.50.

"For fourteen 7 per cent. permanent improvement bonds of the District of Columbia of the denomination of $1,000 each, of value of $1,200 each, $16,940.

"Interest on the aggregate from the 1st day of January, 1881, until paid, at 6 per cent per annum."

In September, 1883, the defendant filed several pleas—first, that he never was indebted as alleged; second, that the bonds were not the property of the plaintiff and that the plaintiff had fraudulently obtained possession of them; and, third, that the bonds belonged to a certain Patrick Cullinan, who had already given notice to the defendant of his claim, since this suit, and had demanded the return of the bonds; and that this fact was fraudulently concealed from him by the plaintiff.

In May, 1885, the defendant moved for leave to withdraw his pleas and demur to the declaration because of the misjoinder of counts, upon the ground that the first count is one in trover and the others in assumpsit; and the minutes of the court show that with the leave of the court the plaintiff withdrew his first count.

This leaves in the declaration nothing but the special count on the small note and the common counts before referred to. On the 10th of December of the same year the plaintiff filed an amendment to his declaration, in which he sets forth, as a substitute for the first count, the same facts that were before set out; but instead of claiming the value of the bonds alleged to have been converted he says: "That the said defendant did not return said bonds to him, or any of them, although often requested so to do; but, to wit, the day and year last aforesaid, sold the same and received therefor a large sum of money, to wit, the sum of $15,645, by reason whereof an action hath accrued to the plaintiff to have and demand of the defendant the said sum of $15,645, money had and received by the said defendant for the use of the plaintiff, with interest thereon from the 22d day of January, 1881."

He claims in this count not damages in the shape of the value of the bonds converted, but the actual amount received as money had and received. I may as well say here, to avoid any further trouble with this count, that this was held to be bad in the court below, because it amounted to the same thing as the common counts for money had and received. It therefore also disappears from the declaration.

The second amendment is a description of the small note, and the third consisted of additional and other particulars of demand.

As I have already stated, the particulars of demand filed in the first instance were fourteen 7 per cent. permanent improvement bonds of the District of Columbia; and in this amendment the particulars are "Cash received, by the said Taylor for the use of the plaintiff, $15,645." This is stated in a half dozen different forms to meet the exigencies of the proof.

When these amendments were filed the defendant filed a plea that the cause of action did not accrue within three years before the amended declaration. This proceeded upon the ground that the original declaration did not embrace the cause of action which was exhibited in this amendment; that the amendment, for the first time, set it forth, and was equivalent to bringing a new suit, and therefore the defendant had the right to plead that the cause of action did not accrue within three years before the filing of the amendment. This was held bad on demurrer, and then the usual plea of the statute was filed.

The result, then, of these various rulings on different motions and demurrers, which it is not worth while to give more in detail, was that the pleadings consisted of a count on the small note and the common counts; and, on the part of the defendant, of the general issue, and the plea that the course of action did not accrue within three years before the commencement of the suit.

Then there were four replications to this plea of the statute of limitations. The first replication is in the usual form, that the said cause of action did accrue within three years prior to the institution of this suit. The second was that there was a fraudulent concealment of the cause of action from the plaintiff, which was not discovered until within three years before the commencement of this suit. The third was an acknowledgment of the liability within three years prior to the commencement of the suit and a promise to pay the same; and the fourth was an acknowledgment by the defendant that he had sold the bonds and received the proceeds of the sale thereof and promised to pay the same. The third and fourth are substantially the same.

The defendant thereupon moved the court to compel the plaintiff to elect upon which of these replications he would rely. The motion was overruled. Thereupon the defendant demurred to the replications, for duplicity, because the court allowed four replications to one plea. That demurrer was overruled, and thereupon the defendant demurred separately to each of the second, third, and fourth replications. These demurrers being overruled, issue was joined upon replications.

When the jury was sworn there was a motion to strike from the bill of particulars the second item, and then a motion to withdraw the rejoinders of the defendant to the plaintiff's second, third, and fourth replications to the defendant's plea of the statue of limitations and that the plaintiff be compelled to elect upon which one of his replications he would stand. That motion was overruled.

The case then went on for trial, and the final instructions given by the court were:

"1. If the jury believe from the evidence that the defendant received from the plaintiff fourteen bonds, commonly called 7 per cent. permanent improvement bonds of the District of Columbia, such as are described in the particulars of demand filed with plaintiff's declaration,

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under an agreement to return the same, and has not returned them, and sold them without the knowledge or consent of plaintiff, and fraudulently concealed the fact of such sale from him until within three years prior to the institution of this suit, and that the plaintiff could not, by the use of ordinary diligence, have discovered such sale until within three years prior to the institution of this suit, then the plaintiff is entitled to recover in this action the sum which the evidence shows the defendant received therefor, with interest thereon from the 22d day of January, 1881.

"2. And if the jury believe from the evidence that the note for $277.50 given in evidence, was given for the balance of interest coupons received by the defendant, on the bonds mentioned in this cause up to and including the 1st of January, 1881, then the plaintiff is also entitled to recover the amount of said note, with interest thereon from the 1st day of January, 1881.

"3. If the jury believe from the evidence that the receipt given in evidence, purporting to have been signed by the defendant, bearing date the 22d day of January, 1881, and the writing addressed to Riggs & Co., purporting to have been signed by the defendant, and the receipt purporting to have been signed by the plaintiff, bearing date the same day, and the two notes purporting to bear date on the 1st of January, 1881, for $7,000 each, and the note for $277.50, purporting to bear date on the 1st of January, 1881, were signed by the defendant and the plaintiff respectively, and were all executed at the same time, and as a part of the same transaction, and related to the bonds in controversy in this suit, then the execution and reception by the respective parties was such a recognition, by the defendant, of his liability as would preclude him from maintaining in this action his plea of the statute of limitations to the plaintiff's demand in this action."

I should observe here that the cause of action arising from the sale would accrue about the 23d of January, 1880, and suit was not brought until 1883. The answer to the statute of limitations was that in 1881 there was a new promise which revived the liability, and also that there was a fraudulent concealment, which was not discovered until July, 1881, both of which periods would be within three years before the suit was brought.

Then the defendant prayed the court to instruct the jury that if they find from the evidence in the case that the defendant, by virtue of the contract of January 22, 1881, had the right to elect either to return the bonds claimed, or to retain them, and that he did elect to retain the bonds, then the plaintiff cannot recover in this action.

There was also an offer by the defendant to prove that the bonds did not really belong to the plaintiff, but belonged to certain other parties, and that therefore the plaintiff was not entiled to recover.

The errors assigned, which indicate the questions made in the course of the trial, were—first, allowing the plaintiff to change his cause of action from trover to assumpsit, as it is called; second, allowing a new cause of action to be introduced by the change from trover to assumpsit after the statute of limitations had run against it; third, the sustaining of the demurrer to the plea of the statute of limitations to the amended declaration; and fourth, the refusal of the court to nonsuit the plaintiff, on the ground that the papers showed a mere alternate or optional contract to return or pay the value of the bonds, and that the plaintiff in that case could not recover on the common counts; and, lastly, the refusal of the court to allow the defendant to show that the plaintiff was not the owner of the bonds.

This leads us to inquire, what, from the conceded evidence in the case, was really the cause of action, and when did it accrue with reference to the commencement of the suit, and then did the original declaration, so far as it remains unchanged by the amendments, contain apt words and averments to embrace the real cause of action, or does that only appear in the amended declaration?

The transaction is found in certain written instruments, which are undisputed as to their genuineness and will be easily understood, commencing on page 24 of the record. The first is a receipt dated October 2, 1877, as follows:

"Received from W. B. Moses, $10,000 in the 7 per cent. general improvement bonds of the District of Columbia, which I am to return upon call.

"(Signed) GEORGE TAYLOR."

The next is a receipt dated October 25, as follows:

"Received from W. B. Moses, two bonds of $1,000, known as the 8 per cent. improvement bonds of the District of Columbia, to be returned on call.

"(Signed) GEORGE TAYLOR."

The third is a receipt dated December 29, 1877, as follows:

"Received from W. B. Moses, two District Columbia bonds, 7 per cent. improvement, of $1,000 each, to be returned on call.

"(Signed) GEORGE TAYLOR."

The first receipt, it will be observed, is dated October 2, 1877, and thirty-nine months afterward, that is, on the 22d of January, 1881, there appears another:

"WASHINGTON, D. C., Jan. 22, 1881.

"This is to certify that I have received from W. B. Moses, esq., as a matter of accommodation to me, fourteen one-thousand-dollar D. C. 7 per cent. int. permanent improvement bonds, and that the said bonds are now on deposit in my name with Riggs & Co., bankers of this city; and I hereby hold myself personally responsible to the said W. B. Moses, his heirs or assigns, for the safe return of said bonds, orignally receipted for, this being only a duplicate for the same bonds.

"(Signed) GEORGE TAYLOR."

On that same day the defendant executed two promissory notes, which were dated, however, on the first of the month, one being a promise to pay $277.50 one month after date, and two notes for the sum of $7,000, payable four months after date, with interest at the rate of 7 per cent. per annum.

The plaintiff, on the 22d of January, 1881, executed the following paper:

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"WASHINGTON, D. C., January 22, 1881.

"Received of George Taylor, esq., his two notes Jan'y 1, 1881, each at four months from date and for the sum of $7,000, payable at Bank of Washington, with interest at 7 per cent. per annum until paid, same being as collateral security for my fourteen one-thousand-dollar D. C. 7 per cent. int. permanent improvement bonds, same being held by him as a loan for his accommodation, and now on deposit in Messrs. Riggs & Co's. Bank.

"It is understood that these notes are to cover but the face amount of said bonds and their interest, any and all premiums above par on said bonds being due to me, and to be accounted for to me if the bonds as stated are not returned to me.

"(Signed) W. B. MOSES."

There is still another paper to which I will refer, dated January 22, 1881, viz.:

"WASHINGTON, D. C., January 22, 1881.

"Messrs. RIGGS & Co., Bankers.

"GENTS: I hereby authorize you to accept from W. B. Moses at any time he may call, from and after this date, the sum of $14,000, and deliver to him in return the fourteen one-thousand-dollar 7 per cent. int. D. C. improvement bonds, now on deposit in your bank in my name. If living, this order—it is understood if I am living—is to be presented through myself.

"(Signed) GEO. TAYLOR."

This was the transaction as shown on the papers. There was also some correspondence between the parties. At the trial the evidence on the part of the plaintiff tended to show, without contradiction, that in January, 1880, a year before these papers were executed, the defendant having previously obtained money upon the pledge of these bonds, partly with Riggs & Co. and partly with the National Metropolitan Bank, sold all of the bonds and paid off the loans due upon them and received the balance, which was $1,446.48.

The first question made in the argument may be said to be whether this was an agreement to return the identical bonds or simply an agreement to return an equivalent amount in similar bonds. It was argued that this transaction was in the nature of what the civil law calls a *mutuum*, when one party borrows securities and has to return similar securities, but not the identical ones—a transaction somewhat common among stock brokers.

This idea, however, seems to be inconsistent with the language of the receipt of January 22, 1881, which says:

"This is to certify that I have received from W. B. Moses, esq., as a matter of accommodation to me, fourteen one-thousand-dollar D. C. 7 per cent. int. permanent improvement bonds, and that the said bonds are now on deposit in my name with Riggs & Co., bankers, of this city; and I hereby hold myself personally responsible to the said W. B. Moses, his heirs or assigns, for the safe return of said bonds, originally receipted for, this being only a duplicate for the same bonds.

"(Signed) GEO. TAYLOR."

It, therefore, appears clearly that the obligation was to return these identical bonds, and not an equivalent amount in similar bonds.

It is further contended, however, that the obligation to return was not an absolute one, but that it was optional with the defendant either to return the bonds or pay their value. Every delivery of personal property is either by way of bailment, sale, or gift. It may be a bailment convertible into a sale; that is, I may deliver or loan securities to a person, with the understanding that, at his option, he may choose to appropriate them to his own use and pay the value, which would be to convert the bailment into a sale. That is substantially what is contended here, viz., that this was a bailment convertible into a sale at the election of the defendant.

The only language which seems to be relied upon in this regard is found in the receipt executed by the plaintiff himself, in which it is stated: "It is understood that these notes are to cover but the face amount of said bonds, and their interest, any and all premiums above par on said bonds being due to me and to be accounted for to me if the bonds as stated are not returned to me."

This is supposed to convey the idea that the defendant may elect not to return the bonds. But it must be remembered that in the first part of the receipt these two $7,000 notes are described as collateral security for his bonds, which are held as a loan for his, the defendant's, accommodation. The notes were therefore given as collateral security, and collateral security always implies an original obligation. The original obligation here described is that found in the receipt executed by the defendant, in which he expressly agrees to return the bonds.

But, lest it might be supposed that the payment of the two $7,000 notes would be a discharge of the obligation, and in order to avoid that inference, it is added to this receipt that these two notes are intended to cover only the face of the bonds, and that if the defendant fails to perform his contract for the return of the bonds he is not to be discharged, but is held accountable for the premiums also. It, therefore, seems to us that this is not in the nature of an optional agreement.

But, suppose it to be. Suppose the view taken by the defendant is correct. It then becomes important to ascertain, with reference to the pleadings, whether the defense of the statute of limitations is available. If this was a bailment convertible into a sale, at the election of the defendant, then of course that election could not have been exercised before the date of the agreement itself, which was January 22, 1881. It cannot go further back than that, and that would be the earliest date to which the sale can be attributed, by the election of the defendant to take the bonds. That would be within three years of the bringing of the suit, and then the question would arise whether the declaration as originally filed contained apt averments to embrace that case.

In Archbold's Nisi Prius, p. 155, we find the law stated thus:

"A contract which in the first instance was not a sale, but might become so upon the happening of a particular event, may, on the happening of that event, be declared upon as such, and the price be recovered in an action for

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goods sold and delivered; as, for instance, where the plaintiff lent the defendant a musical snuff-box, upon the condition that he was to have it and pay £3 10s. for it, if it were damaged, and it being afterward damaged, the plaintiff sued for the price in an action for goods sold and delivered; the court held that the action lay; it was in fact a sale upon condition, and the condition happening the sale became absolute. Bianchi v. Nash, 1 Mees. & W., 545. So where the plaintiff sent goods to the defendant on sale or return, who kept them two years without returning or rendering any account of them, Lord Kenyon, C. J., held that as more than a reasonable time had elapsed the plaintiff might treat it as a sale and delivery and maintain an action for the value of the goods, as for goods sold and delivered. Bayley v. Gouldsmith, Peake, 56."

In this case, as I say, if the election was exercised under this contract which made it a sale, it could not go back further than the 22d of January, 1881. The action was brought in June, 1883, and the original declaration contains a count for goods sold and delivered by the plaintiff to the defendant; and that count would cover the case of the sale of these securities as goods sold and delivered. And the particulars of demand filed at that time would cover the identical case, because as appropriate to the count for goods sold and delivered, we find in the particulars of demand fourteen one-thousand-dollar bonds of the District of Columbia, of the value of so much money; so that, if the view taken by defendant is correct, that this is an optional agreement, under which he may elect to take the bonds, the case of the plaintiff is properly described in the declaration and particulars of demand, and all questions about the statute of limitations would thereby be avoided.

But, as I have stated before, we have taken a different view of the meaning of this contract and have treated it as an absolute obligation to return these bonds. If this had been an action of trover alone the plaintiff would have made out a complete case of conversion by simply producing the defendant's receipt of January 22, 1881, acknowledging his possession of and accountability for these bonds, and by showing the subsequent demand and refusal in July, 1881. That would have shown a conversion as of the date of July, 1881, which was within three years before the beginning of the suit. The same thing would apply if this had been an action on the special contract contained in that receipt. But it is an action of assumpsit for money had and received, upon the assumpsit which the law implies from the sale of the bonds and the receipt of the proceeds. The party injured had the right to waive the tort, ratify the sale, and sue in assumpsit. It, therefore, became incumbent upon the plaintiff, in order to sustain this action, to show that the bonds were not only converted by the defendant, but were sold by him; and in proving that he had to prove that the bonds had been sold in January, 1880, a year before the date of this receipt, and consequently more than three years before the beginning of this suit, although the original declaration did not develop that fact.

That obviously opened the way to the defendant to plead the statute of limitations. The answer of the plaintiff to this plea is that the conversion of the bonds in January, 1880, had been fraudulently concealed from him; and the fact was not disclosed to him until July, 1881, when he went to the bank of Riggs & Co., with the receipt that I have read, authorizing him to take up the bonds by paying the amount of the loan, and he then discovered that they had been sold. The plaintiff maintains that the statute of limitations only runs from the time of the discovery of the thing which was fraudulently concealed. He further says that the receipt of January, 1881, was an acknowledgment of the liability which revived it within three years before the suit was brought.

In answer to that, again, the defendant says that the original declaration did not describe this cause of action, and that it is only developed in the amendment to the declaration, which was not filed until December, 1885, more than four years after the alleged new promise, and the alleged discovery of the fraudulent concealment.

It, therefore, becomes important to ascertain what were the effects of the amendments allowed by the court. In the first place the court allowed the plaintiff to withdraw his original count, which seemed to be a count in trover. Quite a number of authorities have been cited to show that the court has no right to allow a plaintiff to convert an action of trover into an action of assumpsit. If this had been exclusively an action of trover, the authorities would apply; but it was apparently an action of a double aspect. It was alleged to be both trover and assumpsit, and all that the court did was to strike out the feature that seemed to make it an action of tort and allow it to remain an action of assumpsit. We have seen no authorities that forbid the court from doing that. So far we see no error in the rulings of the court as to the amendments.

But it is claimed that the further particulars of demand filed in December, 1885, which particulars consist of a claim for the amount received from a sale of the bonds, instead of a claim for the value of the bonds, show a new cause of action. There is no rule of common law, nor were there any rules of this court, which compelled a plaintiff to file any bill of particulars with his declaration. But it was always the privilege of the defendant to compel the plaintiff to reduce the generality of his common counts to certainty by filing a bill of particulars; and when it was filed, under any count, it became, by relation back, a part of the original declaration. If the plaintiff filed a bill of particulars suitable only for one count and went to trial upon that, he was confined, in his evidence, to that bill of particulars; but if he had filed a bill of particulars under one count there was no rule which prevented him from afterward filing particulars under any and all his other counts.

In this case it appears that the plaintiff had originally filed particulars of demand which were appropriate only under the counts for goods sold and delivered. Before the trial he takes leave to amend and files particulars of demand which are appropriate also to the count for money had and received. He might just as well have gone further and obtained leave to

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file particulars of demand under the count for money lent, and these two $7,000 notes would have been evidence under that count.

The argument seems to be that although the declaration stood with the common counts and was in form assumpsit, yet because this bill of particulars claimed the value of the bonds, in contemplation of law it was an action in trover. But this is a *non sequitur*. This bill of particulars, that was filed with the declaration, either was or was not intended as a bill of particulars under the count for money had and received. If it was not intended as such, it was good under the count for goods sold and delivered, and it was open to the plaintiff at any time to file particulars of demand under the count for money had and received. If this was intended as a bill of particulars under the count for money had and received, it was erroneously stated, but that is all. It did not make the declaration one in trover.

Suppose the declaration, instead of having the common counts, had specifically stated the conversion of these bonds, and then instead of claiming damages in the shape of the value of the bonds had expressly counted upon a promise and undertaking by the defendant to pay the value of the bonds. That would be clearly an action of assumpsit; but if at the trial it appeared that the plaintiff relied upon the promise implied by law he would, perhaps, have to amend his declaration and reduce his claim from the value to the actual amount received. All that the court did under the circumstances of the present case amounts to allowing the plaintiff to amend a defective count, for money had and received, by correcting his bill of particulars. We see no objection in the world to the exercise of that power by the court.

The consequence of that would be that when the particulars of demand are filed they relate back and become part of the original declaration. So that here is a case where the original declaration contained a count for money had and received, which was a proper count under which claim could be made for the proceeds of these bonds. Therefore we think that the court was right in holding that the defense of limitations must be pleaded with reference to the commencement of this suit, and not with reference to the filing of this amendment, which is merely an amendment of a count originally filed, and not the introduction of a new cause of action.

This leads us to consider the strength of the defense of limitations. The plea then filed was that the action did not accrue within three years before the commencement of the suit; and the plaintiff answered, as I have already stated, first, that the action did accrue within three years; second, that the cause of action had been fraudulently concealed by the plaintiff, and was not discovered until within three years before the commencement of the suit. The third and fourth replications are substantially the same, and allege a revival of the liability by a new promise.

The first notice of this was a motion to compel the plaintiff to elect upon which replication he would stand and to strike out the other three. That motion was overruled, but no exception was taken to the order of the court at that stage of the case. Then a demurrer was filed for duplicity. At common law, as we all know, a man could not answer any plea by more than one replication. It was only by virtue of a statute that he was allowed to plead several pleas; but that statute only extended to the plea and not to the replication. Therefore there would seem to be a technical error in allowing four replications to be filed to the plea of the statute of limitations. The question, however, is, first, whether that is properly before the court; and, next, whether it is error which would require the court to reverse the judgment below.

It is to be observed that the United States Supreme Court has acted upon this question in several cases. It seems to be a hard rule, but still it has laid down the rule that when a party demurs to a pleading and the demurrer is overruled, if, instead of allowing the judgment to go upon that demurrer and taking the case upon appeal, he joins issue upon the pleading, he thereby waives the demurrer and it is not a subject for review in the court above. This was held in Aurora v. West, 74 U. S., 7 Wall., 82; Watkins v. U. S., 76 U. S., 9 Wall., 762; Campbell v. Wilcox, 77 U. S., 10 Wall., 421; Stanton v. Embry, 93 U. S., 548; and in Young v. Martin, 75 U. S., 8 Wall., 354.

In Young v. Martin the court says that independent of certain other considerations, "The ruling of the court on this point would not be noticed, for it appears that the plaintiffs, instead of relying upon the sufficiency of the alleged demurrer, filed a replication to the answer. They thus abandoned their demurrer and it ceased to be a part of the record."

I should further observe that the rule which would exclude more than one replication is certainly not a rule in the interests of justice, if the plaintiff really had several answers to the plea of the statute of limitations; and it is not, therefore, one which should be extended. There is also great force in what has been said in the argument for the plaintiff, to wit, that allowing these four replications to be considered by the jury did not admit any other evidence than would have gone to them under any one of the replications; in other words, that identically the same evidence was relied upon by the plaintiff in proof of every one of these replications, and it was the same evidence which he had used in proof of his substantive case in the beginning. For instance, the receipt of January 22, 1881, was relied upon as a new promise and a new acknowledgment of the liability; and the certificate contained in that receipt that the bonds were in possession of the defendant and on deposit with Riggs & Company was relied upon as evidence of concealment; so that really no harm could be said to have been done to the defendant by allowing four replications to the plea, when the same identical proof tended to establish them all. However, the rule seems to be settled that the joinder in the pleadings afterward was a waiver of the demurrer; and therefore we do not think that we have a right to review here the question raised by the demurrer.

After the jury was sworn the defendant endeavored to raise the same question again by a motion to withdraw his rejoinder to the plain-

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tiff's second, third, and fourth replications, and that the plaintiff should be compelled to elect upon which replication he would stand. This was overruled, and it was excepted to. That was an application to amend the pleadings after the jury was sworn, and that was essentially an application that rests in the discretion of the court, and is not the subject of review at all in this court; so that by no possibility can the question involved in this objection to the four replications be considered by us as properly before us.

Before the jury were sworn the defendant filed separate demurrers to each of the second, third, and fourth replications, and a joinder in issue as to the first replication. It is objected that the plaintiff has no right to reply to the plea of the statute of limitations that the cause of action was fraudulently concealed from him, and that he did not discover it until within three years before the commencement of the suit. It is sufficient for us to say, with reference to that, that, while there is a conflict of authorities among the States, the Supreme Court has sufficiently stated its opinion that in the Federal courts, either at law or in equity, this replication is a valid one to the plea of the statute of limitations—that is to say, it holds it to be a good answer that the plaintiff did not bring his action sooner because the accruing of the cause of action had been concealed from him fraudulently by the defendant, and therefore the statute ought not to run against him, except from the discovery of the wrong.

The third and fourth replications substantially set up an acknowledgment of an existing liability and a new promise within three years, and the receipt of the defendant of January 22, 1881, in which he acknowledges himself accountable for the bonds, was relied upon in evidence; and then there was the parol evidence of the plaintiff that as late as July, 1881, he had promises from the defendant to return the bonds or pay the value. The question suggested in argument was whether a new promise of that sort can be held to revive a promise implied by law from the receipt of the proceeds of sale after a tortious conversion of the property. As we all know, a party may waive the tort and sue upon an implied assumpsit; but the question is, would the new promise revive the promise so implied by law?

The question seems to be answered by the case of Hony v. Hony, 1 Sim. & Stu., ch. 560. That was a case in which a party had converted a certain amount of timber more than six years before suit was brought against him, but within six years before suit was brought he had rendered an account of it which was imperfect, and the plaintiff filed his bill for a further accounting. Then the defendant relied upon the fact that his alleged conversion had been made more than six years before the suit was brought. But the court said:

"It is clear upon the authorities that the plaintiff might have elected to bring an action of assumpsit, and not trover, for money had and received by the defendant from the sales of timber, and that the render of the account, as alleged by the bill, would have been an acknowledgment by the defendant, which in the action of assumpsit would have taken the case out of the statute of limitations. The plaintiff does not in this bill impeach the sale of timber as improperly or improvidently made by the defendant; and although he prays an account of the value, it would be quite consistent with the case made by the bill that he should seek a decree on account of the produce of the sales as truly representing the value. I consider the bill here, therefore, as analogous to an action of assumpsit, and that the alleged render of the account defeats the plea of the statute of limitations."

That is a case analogous to the present. Here, the alleged conversion took place in January, 1880, and in January, 1881, the defendant acknowledges himself accountable for the property; and within the principle and meaning of that decision it is a revival of the implied assumpsit growing out of the conversion in 1880.

This disposes of the subject of limitation, which was the main defense relied upon in this case. We see no reason to reverse the action of the court below for any error in that regard, the only error, we think, being removed from the record by the waiver resulting from the joinder in the pleadings.

One other question remains. The defendant at the trial offered to show title in some party other than the plaintiff, and that these bonds really belonged to other persons. As we have said before, this was a case, in our judgment, of bailment, and it seemed to be conceded in argument that if it is a case of bailment the bailee cannot dispute the title of his bailor, except under certain circumstances, such as that the property was recovered from him by a better title or that he had voluntarily surrendered it to one having a better title.

But here was a case where the defendant had appropriated the bonds to his own use and had received the value for them. They had never been delivered by him to anybody and had never been recovered from him by a better title. This was sought to be met in the argument by saying that this was not a bailment, but that it was merely a sale of the bonds.

We do not take that view of it. But even suppose that to be true, would it make any difference? The defendant having sold the bonds and having had the full benefit of them, what excuse could he make for not paying for them? The only one we can conceive would be that the true owner might sue him for the conversion of them to his own use, or that his vendee might sue him on an implied warranty. But that would not apply to a case like this, because these bonds were coupon bonds, payable to bearer, and therefore were transferable by delivery; and if the defendant bought them he acquired a good title, and if he sold them he passed a perfect title to his vendee; and he could not be sued for conversion of them, nor could his vendee be disturbed in his title and thereby acquire a right of action against him on an implied warranty.

We think, therefore, that the court below was right in excluding testimony to the effect that the bonds were owned by some person other than the plaintiff, and that upon the whole there is no ground to sustain the motion for a new trial on exceptions.

The motion is therefore overruled.

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English Trade-Mark Case.

Mr. Elliott, the contractor for supplying refreshments to hungry clients or practitioners in the Royal Courts of Justice, has been getting into trouble with the Free Fishers and Dredgers of Whitstable; so the Free Fishers applied to Mr. Justice Stirling for an injunction to restrain Mr. Elliott, his servants, &c., from exhibiting placards bearing the words, "Whitstable native oysters," except for the purpose of selling genuine Whitstable native oysters, and from selling, either directly or indirectly, oysters purporting to be Whitstable native oysters which were not genuine. The plaintiffs were incorporated in 1793. Their trade-mark was a man dredging for oysters, with the words, "Whitstable native oysters." They had used the mark for over 100 years, and registered it in January, 1887. They obtained the spat and young oysters from Colchester, Rainham, and other places on the coast of Essex, and brought their oysters to maturity on their beds in Whitstable Bay, of which they claimed to be the proprietors. The defendant obtained the oysters which he offered for sale from the Sea Salters' Company, who were supplied with spat and young oysters from Brittany and other places on the coast of France, and which were also brought to maturity on beds of the company at Whitstable. There were other oyster beds at Whitstable, known as free or public. The plaintiffs complained that the defendant offered for sale Whitstable natives at a price much lower than the best natives could be sold for, and that the oysters which he offered for sale were only "Seconds." It was stated that the Seasalters' Company's oysters were originally known in the market as "Princesses," but now as "Seconds." The plaintiffs asked for an injunction to prevent the injury which they were suffering in their business, the name "Whitstable native oysters" being that under which their oysters were known to and recognized by the public. Sterling, J., was of opinion that he could not, upon the evidence, hold that the oysters matured by the Seasalters' Company could not be described as "Whitstable," but they could not properly be designated as "Whitstable native oysters;" also that the plaintiffs had a right to prevent those oysters being sold knowingly as "Whitstable native oysters." An injunction was granted to prevent the use of the word "native" except in connection with oysters the spat or young of which came into being in the estuary of the Thames or its neighborhood, and were matured at Whitstable.—*The Jurist.*

IN a recent address before the Yale Kent Club, at New Haven, Mr. David Dudley Field said: "Another of the anomalies which should be eliminated from our legal system is the distinction between sealed and unsealed instruments. Can anybody give a reason for this distinction, except the historic one, that seals were used when most men were unable to write? Now, when most men do write, why use the seal, or, if the seal is used, why give it a significance and importance not given to the writing? I find in your Revised Statutes a provision that a deed of real property must have a seal and two witnesses at the least. You cannot transfer to your neighbor a cabin for a hundred dollars without these ceremonials; but you may transfer to him a million of dollars' worth of railway stock by a simple signature, without seal or witness. Upon a sealed instrument you may bring a suit within seventeen years, but if the seal is wanting you must sue within six years. Is it a reason why these anomalies should be retained in the valley of the Connecticut because they came from the valley of the Thames?"

Book Notice.

Federal Restraints on State Action. By Christopher Stewart Patterson, of the Philadelphia Bar. H. J. W. Johnson, publishers, Philadelphia, Pa.

That class of cases which involves questions of implied constitutional restraint upon State action is the most difficult of solution of any that find their way into the Supreme Court of the United States. The cases are not all reconcilable, and the court itself, as at present constituted, is somewhat out of harmony when this character of cases is to be discussed and determined. The author of this volume does not attempt to settle controverted points, but rather has devoted his labor and talents to a careful classification and analysis of the cases already adjudged. We have read the greater part of the work and think it an able and instructive contribution to legal literature, informing, while at the same time, by its clearness of style, interesting the reader. All cases of the Supreme Court upon the subject, as late as Mugler v. Kansas, *in re* Ayres and Spies v. Illinois, are included, bringing the arrangement down to the one hundred and twenty-fourth volume of the Supreme Court Reports.

Current Articles in the Magazines.

Discretionary Charitable Bequests. By Edmund H. Bennett. *The American Law Register* for April, 1888

Consideration in Deeds. Richard Venable. *Maryland Law Journal.* May 2, 1888.

Gifts in Anticipation of Death. *Irish Law Times.* April 28, 1888.

The Laws of Property. Coleridge, C. J., of England. *McMillan's Magazine.* May, 1888.

Priority of Liens—Computation of Time. *The Albany Law Journal.* April 21.

Specific Performance—Agreements to Arbitrate. J. C. Harper. *Ohio Law Journal.* May 7, 1888.

The History of Assumpsit. Second paper. F. B. Ames. *Harvard Law Review.* May, 1888.

The Limits of Sovereignty. A. Lawrence Lowell. *Ibid.*

Effect of Admissions by Partners. Stewart Rapalje. *Central Law Journal.* May 18, 1888.

The Effect of a Supersedeas. Thomas P. Bagby. *Virginia Law Journal.* June, 1888.

Foreign Voluntary Assignments Contravening Domestic Laws. William Webster. *The Central Law Journal.* May 11, 1888.

Agents' or Servants' Frauds. *Justice of the Peace.* April, 1888.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John A. Graham**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1888.

WILLIAM C. GRAHAM, Ex'r, 823 13th st. n. w.

22 No. 3067. Ad. D. 14. J. H. Ralston, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William H. Scott**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of May, 1888.

AMANDA J. SCOTT, Adm'x, 1238 I st. s. e.

22 No. 3075. Ad. D. 14. H. T. Taggart, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth Lowe**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of May, 1888.

SUSAN B. LATIMER,
ANNIE J. ADAMS,
Executrices.

22 No. 3076. Ad. D. 14. Mason N. Richardson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of May, 1888.

Sarah M. Rea v. **Richard F. Rea.** } No. 11103. Equity Docket.

On motion of the plaintiff, by Mr. T. H. Fitnam, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of desertion for an uninterrupted period of over six years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
22 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John L. Miller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of May, 1888.

GEORGE M. JONES, Ex'r, 310 14th st. n. w.

20 No. 3034. Ad. D. 14. Chas. E. Fraser, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Columbus W. Thorn**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1888.

ELDRED G. DAVIS, Ex'r, 719 Market space.

20 No. 3069. Ad. D. 14. Edwards & Barnard, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Edward P. Davis et al. v. **James S. Davis et al.** } Eq. No. 10257.

Consolidated.

James S. Davis et al. v. **Edward P. Davis et al.** } Equity No. 10576.

George E. Hamilton, Trustee, having reported that he has sold the property mentioned in these proceedings, to wit, sub-lot lettered "L," in square numbered four hundred and sixty (460), to Samuel F. Merrill, for thirty-seven thousand dollars ($37,000), it is ordered, this 26th day of May, A. D. 1888, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 26th day of June, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
22 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of May, 1888.

Emma Johnson v. **John H. Cook, jr., et al.** } No. 11,119. Equity Docket 28.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendants, **John H. Cook, jr.**, and **Joseph T. Settle**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the deed of trust dated on the 3d day of June, 1872, and recorded in liber 691, folio 164, the same having been given by Emma Johnson and her husband to John H. Cook, sr., now deceased, as Trustee to secure defendant Settle in the sum of $250.00 released.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
21 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 22d, 1888.

In the case of William W. Boyce and Abner Kingman, Executors of **Ellab Kingman**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

21 No. 1180. Ad. D. 10.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Josephine Davis**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of May, 1888.

20 JNO. H. SMYTH, Adm'r, 522 8th st. n. w.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Hiram W. Jackson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of May, 1888.

MARION B. JACKSON, Adm'x, 1619 19th st. n. w.

20 No. 3084. Ad. D. 14. Edwards & Barnard, Proctors.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Richard R. Thornton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of May, 1888.

her
CLARA A. ⋈ THORNTON, Ex'x., 1520 3d st. n. w.
mark.

21 No. 3093. Ad. D. 14. Wm. H. H. Hart, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of May, 1888.

Otis F. Presbrey and Frank M. Green, partners, doing business as Presbrey & Green, v. Effie H. Ober. } No. 29,546. Law Docket.

On motion of the plaintiffs, by Mr. B. F. Leighton, their attorney, it is ordered that the defendant, Effie H. Ober, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to establish the liability of the defendant to pay the plaintiffs the sum of $5,000, besides interest and costs, as claimed in their declaration, and to obtain a judgment of condemnation for payment of said claim against said defendant of all her right, title, and interest in and to a tract of land situate in the county of Washington, in said District, called "Cliftbourne," and more particularly described in these proceedings.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
20 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edward S. Hall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of May, 1888.

MARY C. HALL, Adm'x,
Cor. 6th and K st. s. w.

21 Jno. A. Clarke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Leonora J. Briggs et al. v. Ignatius G. Combs et al. } No. 10,819. Equity Docket 27.

The Trustees, Daniel O'C. Callaghan, Eugene Carusi, and James S. Edwards, appointed in this cause, having reported the sales of the following property, to wit, part of original lot 1, in square 461, 604 Pa. ave. n. w., unto Patrick Moore, at and for $28,000; sub-lot F, in square 380, No. 920 Pa. ave. n. w., unto William H. Combs, at and for $13,725.00; part of original lot 6, in square 380, Nos. 928 and 930 Pa. ave. n. w., unto David Leverone and Stephen Gatti, at and for $17,825.00; sub-lot A, in square 349, No. 1000 Pa. ave. n. w., unto Daniel Loughran, at and for $22,200.00; part of lot 15, in square 374, No. 918 I st. n. w., unto Charles G. Thorn, at and for $15,350; sub-lot 10, in square 341, No. 1124 10th st. n. w., unto William H. Combs, as Trustee for the wife and children of Ignatius G. Combs, at and for $5,000; sub-lot 11, in square 341, No. 1126 10th st. n. w., unto Myron M. Parker, at and for $5,000; part of sub-lots 4 and 5, in square 344, No. 810 10th st. n. w., unto Adajah Behrend, at and for $4,275.00; the south 19 feet 10 inches of said sub-lot, 4 in square 344, containing about 1980 square feet, unto William H. Combs, at and for $2.17½ per square foot; and lot 22, in square 16, unto Thaddeus W. Patchin, Trustee, at and for 20c. per square foot, it is thereupon, this 16th day of May, A. D. 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named day.

The sales aggregate $116,866.70. W. S. COX, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
21 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of May, 1888.

John Tynan v. Mary Brown. } No. 11,129. Equity Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Mary Brown, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest title to lot 3, sub. of lots 10, 11, and 12, in square 198, Washington, D. C., and vest same in complainant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
21 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of May, 1888.

Samuel F. Emmons v. Henry Wise Garnett et al. } No. 11,092. Docket 28.

On motion of the plaintiff, by Messrs. Linden Kent and A. C. Bradley, his solicitors, it is ordered that the defendants, Lewis M. Todd, Annie Hartman, and Enoch S. Shane, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an injunction to restrain the disposition of certain property described in the bill of complaint, to declare the alleged last will and testament of Weltha A. Emmons, deceased, inoperative as to said property, and that the same may be surrendered to complainant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
20 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Lorenzo Sitgreaves, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of May, 1888.

MARY JESUP SITGREAVES, Adm'x c. t. a.
1300 N st., Washington, D. C.

21 Wm. G. Johnson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 16th, 1888.

In the case of Julia M. Weidman, Executrix of Jonh C. Weidman, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 15th day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
20 No. 2711. Ad. D. 18. Fillmore Beall, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of May, 1888.

Cordelia Skidmore et al. v. James Sands et al. } No. 10,803. Equity.

On motion of the plaintiffs, by Mr. E. A. Newman, their solicitor, it is ordered that the defendant, John C. Sands, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute Trustees in place of William Bayliss and Thaddeus E. Sands, both deceased, in two certain deeds of trust, for decree adjudging certain indebtedness to have been paid, and directing Trustee to release trust securing same.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
21 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ellen M. Mitchell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of April, 1888.

MARGARET MILLS, Ex'x, 1522 31st st. n. w.

20 No. 3047. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **A. Jackson Jones**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of April, 1888.

SALLIE C. JONES, Adm'x, No. 2306 N st.

20 No. 3070. Ad. D. 14. Hugh Nelson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Lancaster, Pennsylvania, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Francis D. Connelly**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of April next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of April, 1888.

JNO. D. CONNELLY, Adm'r, Lancaster, Pa.

20 B. F. Leighton, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The 15th day of May, 1888.

John A. Donaldson v. **Eli Michael, Lizzie Conner, Charlotte Marker, Amanda Hoover, Charlotte Mullen, James Harvey, Charles Harvey, and Ada Donaldson.**	No. 11,094.	Equity Docket 28.

On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is ordered that the defendants, **Lizzie Conner, Charlotte Marker, Amanda Hoover, Charlotte Mullen, James Harvey, Charles Harvey, and Ada Donaldson**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct a deed from the Howard University to Cassandria Donaldson, purporting to convey to her lot six (6), in block six (6), in the "Howard University" subdivision of the farm of John A. Smith, commonly known as "Effingham Place," in the county of Washington, District of Columbia; also to annul a certain deed of said property made by John A. Donaldson to Eli Michael.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

20 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary C. Hill v. **Samuel Ker et al.**	No. 11,020.	Equity.

Job Barnard and Alex. P. Hill, the Trustees herein, having reported a sale of lot numbered nine (9), of Mary C. Munro's subdivision of original lot numbered one (1) and part of two (2), in square numbered two hundred and forty-six (246), in the city of Washington, District of Columbia, to George M. Barker for $12,900, it is, this 11th day of May, 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 11th day of June, 1888.

Provided a copy of this order be published in the Washington Law Reporter for three successive weeks before said day.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

20 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Charles Lyman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of May, 1888.

PHILIP F. LARNER, Ex'r, 639 F st. n. w.

20 No. 3062. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 11th, 1888.

In the case of Charles W. Edmonston, Executor of **Richard A. Edmonston**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 8th day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

20 No. 2327. Ad. D. 12. C. M. & H. S. Matthews, Proctors.

N THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 11th, 1888.

In the matter of the estate of **John Lippert**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the estate of the said deceased has this day been made by Magdalena Lippert.

All persons interested are hereby notified to appear in this Court on Friday, the 1st day of June next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to probate and Letters Testamentary on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

20 Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 11th, 1888.

In the case of Eugene A. Shekell, Administrator of **Richard R. Shekell**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 8th day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

20 No. 2688. Ad. D. 13. C. M. & H. S. Matthews, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Sarah Wood**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of May, 1888.

GEO. W. BROWN, Ex'r, 1437 Pa. ave. n. w.

20 No. 3068. Ad. D. 14. Henry Wise Garnett, Proctor.

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BLAIR, JOHN S., 1420 F St. n. w.

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Attorney for Mercantile Collecting Agency.

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Addison on Contracts, 1847.
Alabama Revised Code, 1867.
Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

Hannon's Digest, vols. 1 and 2.
Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
Lovelass on Wills.

Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
Powell on Devises.
Preston on Abstracts of Title, 2 vols. in one.

Railway Law (Bonner), 1878.
Ray's Medical Jurisprudence of Insanity, 1853.
Roberts on Wills, vols. 1, 2.
Roper on Wills.

Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
Smith's Probate Law, 1868.
Smith's Elements of the Law.
Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
Willis on Trusts.
Williams on Executors, &c., vol. 2, Thobault's Notes.

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The Washington Law Reporter.
ESTABLISHED 1874.

WM. STONE ABERT, - - - - - Editor
VOL. XVI. - - - - - - - No. 24
WASHINGTON, D. C. - - - - - JUNE 13, 1888

THE case of Nickerson v. Nickerson, published in this issue, is an instance of a class of cases continually coming before the courts wherein the judges' sympathies lie altogether with the wronged plaintiff, but the law bids them decide adversely to his or her claim. A jury, could such a case as this have been submitted to them, would have made short work of the defendant's legal objections. The case is principally interesting for its story rather than for the legal question involved.

IN Gray v. The United States the Court of Claims recently decided that "the care or custody of a public building, in the absence of a statute, an appropriation, a regulation, or an express order of the head of an executive department, is vested by implication in the officer having it for the time being in his official possession and that the services so rendered are incidental to and form part of the duties of his office."

IN the case of Paul Ravesies v. The United States, lately decided by the Court of Claims, the claimant, a commissioner of the United States for the Southern District of Alabama, sued, among other things, for fees for preparing affidavits on which to ground complaints in cases coming before him as commissioner. The court in its finding of facts described the services of the commissioner as follows: "These affidavits were such as witnesses swore to of their own personal knowledge, while the complaint contained only information to the best of the informant's belief besides personal knowledge, and they were intended to show the district attorney what proof he could rely upon before a jury. The district attorney required these affidavits to be shown to him before he would approve a warrant of arrest; and said affidavits were intended to aid the United States district attorney in the discharge of his duties, giving him a history of the case." The claim was decided against the claimant.

It is a misfortune that a different conclusion could not have been reached. A glaring defect of the fee system is the temptation it holds out to officers in districts where the population is small, and criminal offenses small in consequence, to manufacture business. Officials connected with the Department of Justice have frequently observed this, and the requirement of the district attorney in the case before us was an evident attempt to prevent arrests except upon sworn evidence, sufficient in his estimation to secure an indictment. The present decision permits this evil of the system and perhaps encourages it, as it is a judicial announcement that the Congress alone can provide an efficient remedy. It is hardly probable that district attorneys will hereafter require commissioners to perform services for which no compensation can be had or that they will perform them of their own accord.

WE are told by Sir William Blackstone that in the Court of Chancery there were two distinct tribunals—the one ordinary, being a court of common law; the other extraordinary, being a court of equity. The ordinary legal court, he says, was much more ancient than the Court of Equity; and, after recounting to us its jurisdiction, in matters in which the Crown was concerned, he proceeds as follows:

"In this ordinary or legal court is also kept the *officina justitiae*, out of which all original writs that pass under the great seal do issue. These writs (relating to the business of the subject) and the returns to them were, according to the simplicity of the ancient times, originally kept in a hamper, *in hana perio;* and the others (relating to such matters wherein the Crown is immediately or mediately concerned) were preserved in a little sack or bag, *in parva baga;* and thence hath arisen the distinction of the *hanaper* office and *petty-bag* office, which both belong to the common-law court in chancery."

By the Supreme Court of Judicature, act of 1879, it was provided that the office of Clerk of the Petty Bag, among others, should cease to exist at its next vacancy. Recently it became extinct by the death of its incumbent, Mr. Archibald Murray, which inspired the following half humorous and half pathetic comments in the London *Standard:*

"The duties which the official whose place literally knows him no more was wont to exercise are among the most ancient functions of the Court of Chancery, as old almost as the separation of the Aula Regia into the three Superior Courts of Common Law—one older, according to some antiquaries, by very many years than the Chancellor's equitable jurisdiction. As far back as we can trace the possession of any judicial functions vested in the keeper of the Royal Conscience, so far can we trace back the existence of the 'Petty Bag' and the 'Hanaper.' To the simplicity of ancient

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times and nomenclature these two names—the 'little bag' and the 'hamper'—sufficed for all description of the two departments of the office in which the earliest Chancellors discharged their two-fold duty of assisting suitors and determining suits. In the hamper were stored the writs which His Lordship issued to intending litigants; in the petty bag were kept the records of proceedings in the suits to be decided by the Chancellor himself. The hamper was the first to go—the first, so to speak, to be packed off. It is getting on for half a century—so fast time flies—since a Parliament, to whom nothing is sacred, was induced to enact, in the Fifth and Sixth Victoria, chapter 102, that the offices of 'the Comptrollers of the Hanaper, Six Clerks, Sworn Clerks, and Waiting Clerk,' should be, with reservation of existing interests, and the same were thereby abolished. Ten years later the Keeper or Clerk of the Hanaper followed the Comptrollers to the tomb. In 1873 the common-law jurisdiction of the Court of Chancery was transferred to the High Court of Justice; and the contents of the Hanaper, as well as its guardians, having thus been disposed of, a word of execrably low Latin origin passed into the region of mere philological curiosities.

"'Petty Bag,' as we see, was destined, by a curious irony of fate, to linger on many years. Yet it was not without having to prepare for its inevitable doom; for in the year 1852 Chaff Wax and Duputy Chaff Wax, the Sealer and the Deputy Sealer, fell at a simple statutory stroke, and their duties were transferred to the Pursebearer of the Lord Chancellor, with the provision that this official should be thenceforth entitled to such yearly sums for the expenses of the offices of Chaff Wax and Sealer as these functionaries had been in the habit of receiving under a former act of Parliament. When Chaff Wax and Sealer went it must have been indeed felt by all the more venerable frequenters of Lincoln's Inn that the rash hand of innovation would not be stayed until all vestiges of the old constitution of the Court of Chancery were swept away. Political economy should have pleaded for the retention of these offices as affording the finest example of the principle of division of labor that the world has ever witnessed. Chaff Wax, as his name implied, was the man whose duty it was to chafe—or "eschauffer"—the wax in order that Sealer might apply the seal to the writ; and, in order that neither of these two officers should ever be compelled to assume his colleague's duty in his absence, each of them was considerately provided with a deputy.

"What would have happened if Sealer had heated the wax or if Chaff Wax had imprinted the seal it is impossible to say; but it will not do to treat the matter with levity, for on the question of the hand which wielded the actual validating symbol of the Royal authority has ere this depended an issue of the highest political importance.

"Did not Lord Chancellor Nottingham inform a committee of the House of Commons thirsting for Danby's blood that, though the culprit pleaded a pardon under the Great Seal, and, though the document was actually what it purported to be, yet that he, the Chancellor, had no responsibility in the matter? 'His Majesty,' he said, 'commanded the seal to be taken out of the bag, which his Lordship was obliged to submit unto, it not being in his power to hinder it, and then (the King), writing his name on the top of the parchment, had the pardon sealed,' by one of his attendants, or possibly with his own hand; so that 'at the very time of affixing the seal to the parchment he (the Chancellor) did not look upon himself to have the custody of the seal.' Here was a distinguished Deputy Sealer, indeed! A king who unconstitutionally burked an impeachment by forcibly affixing the seal against the advice of the Chancellor, and with that high officer of state standing by as helpless as Chaff Wax himself! No wonder that a prudent Legislature—as Legislatures were in the good old times—were very slow to diminish the staff of persons required to answer for the due performance of so solemn a function of state as this! It was reserved for the recklessness of a later day to assume that these four officials could be relieved of their functions without danger to the state, and that the Pursebearer—who, of course, ought to be attending to the purse—should be charged with the duty, not only of heating the wax, but of imprinting the seal.

"'It is not and it cannot come to good' must have been the headshaking reflection of many a venerable practitioner of the law when the Chaff Waxes, or Chaffs Wax—whichever be the proper plural—and the Sealers disappeared. What were the salaries of these officials—for that delicate question must, of course, be approached at last—we are quite unable to say. We presume that they were paid by fees and not by a fixed salary, and we do not know whether they had to find their own wax and tapers. But, even if these necessary articles were provided for them by an indulgent country, it is probable that their emoluments were not excessive. No Chaff Wax that we are aware of has founded a family or left his mark on the peerage or handed down broad acres and an ancestral mansion to a long line of descendants. The saving therefore to the public from the extinction of these offices is not very enormous. Hanaper and Petty Bag stand or stood—for we must, alas! speak of them in the past tense—on a different footing. The former appointment was probably worth as much as that which has just lapsed, and this latter is worth eight hundred pounds a year. No doubt it could be done for less. The issue of writs of '*scire facias*,' of '*conges d'elire*' for election of bishops and other like duties is perhaps too highly paid by a check for a hundred pounds every quarter-day.

"We can quite imagine that if sealed tenders were solicited from persons willing to undertake these duties at half the present stipend the number of applications for the Petty Bag would, if the antithesis be not too irreverent, suffice to pack a large portmanteau. And no doubt the office can be filled more cheaply by amalgamating it with some other, as we apprehend will be done. Yet, after all, we may be perhaps excused a sigh of regret at this ruthless evulsion, one by one, of every way-mark on that road which stretches back from the broad and level, but somewhat uninteresting, plain of contemporary English life into the dim woodland and mountain region of historical antiquity."

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SUPREME COURT OF THE UNITED STATES.

PREPARED E. S. MCCALMONT.

EMMA C. D. NICKERSON, Appellant,
v.
AZOR H. NICKERSON, WILLIAM B. MATTHEWS, and LENA D. CARTER.

Decided May 14, 1888.

In a suit instituted to enforce an alleged parol ante-nuptial promise relief will not be granted after an unreasonable delay or unless the proof is clear and satisfactory both as to the existence of the agreement and as to its terms. Relief asked refused in this case.

Appeal from the Supreme Court of the District of Columbia.

Mr. Justice HARLAN delivered the opinion of the court.

The substantial relief which the appellant, who was the plaintiff below, seeks in this suit is a decree (1) declaring void a conveyance executed May 31, 1883, by William B. Matthews, trustee, to the appellee, Lena D. Carter, by the name of Lena D. Nickerson, of lot 2, in square 114, in the city of Washington; (2) establishing, in behalf of the plaintiff certain trusts in respect to said real estate; (3) and requiring Matthews and said Lena to convey the same to the plaintiff or to trustees for the benefit of herself and the child of her marriage with the defendant, Azor H. Nickerson. Her bill asking such relief was dismissed with costs.

The case made by the bill is as follows:

The plaintiff, while on a visit to Portland, Oregon, in the year 1870, engaged herself to be married to the defendant Nickerson, then on duty in that city as an officer of the Army of the United States. Prior to such engagement he pointed out to her blocks 145 and 146 in Couch's addition to Portland as his property, and "promised and agreed" that after marriage he would convey them to her as a marriage portion or settlement for the benefit of herself and any children of their marriage, and erect thereon a dwelling house for their use; or, if she so elected, they would sell the blocks and invest the proceeds in other property in Portland, to be held upon like trusts, and, after having advanced in value, sold and the proceeds applied exclusively to the purchase of a house for the plaintiff and her children.

The plaintiff's mother, who resided in San Francisco, having been informed of this engagement, objected to the marriage upon the ground that the defendant was an officer of the Army, without settled place of abode and without other means of support than his pay as such officer. But her objections, the bill states, were overcome by the defendant's verbal assurance to her to the following effect: That the question of support had been considered by the plaintiff and himself; that he was the owner of certain blocks of ground in the city of Portland, and that he had promised and agreed with the plaintiff that if she would marry him he would, immediately after marriage, convey them to the complainant as a marriage settlement, or would hold them as trustee for her separate benefit, and if at any time sold the proceeds should be invested in other property, to be held in like manner for the sole and separate benefit of the plaintiff and her children. Upon the strength of these promises and representations, and relying upon the good faith of the respondent Nickerson, and in consideration thereof, and for no other reason or consideration whatever, the plaintiff's mother, it is alleged, withdrew her objection and consented to the marriage, which occurred on the 13th day of August, 1870. Without her mother's consent, the plaintiff avers, the marriage would not have taken place.

It is also alleged that the plaintiff, relying upon the love and affection of her husband, having confidence that he would, in good faith, keep and perform his agreement, and preferring that the property should be managed by him, without the complications necessarily arising from the interposition of third parties, did not require the lots to be conveyed to trustees for her benefit, but permitted the title to remain in the defendant, "subject to her equitable interests under said agreement."

About a month after the marriage the plaintiff and the defendant united in selling said blocks of ground, the proceeds being invested jointly with one John S. Walker in certain lots in Portland. Walker having died, a division of these lots was effected by judicial proceedings, which were concluded in 1878. In respect to the lots assigned in this division to the defendant, the bill alleges that they were held by him—although there were no writings between them on the subject—"for the sole and separate benefit of the complainant," and "as her trustee under the agreement, promise, and consideration" hereinbefore stated.

While the plaintiff was temporarily residing in Europe, under circumstances to be presently stated, the defendant sold the lots last described and transmitted deeds therefor to be executed by her. The bill states that, not doubting the affection of her husband or his good faith in keeping his agreement, and perceiving from the consideration mentioned in the deeds ($12,000) that the lots had sufficiently increased in value to enable him to carry out his promise to purchase a home for her and her child, the plaintiff executed the deeds—bearing the dates, respectively, of November 26, 1881, December 2, 1881, and January 10, 1882—and returned them to the defendant, with a letter "imploring him to be extremely cautious as to handling said money and in making proper reinvestments."

Instead of investing the moneys received for the lots in a house for the plaintiff and her child the defendant, the bill charges, in execution of a purpose to deprive her of all benefit of said ante-nuptial agreement, invested $8,380 of the $12,000 in lot 2 in square 114, in Washington, which he caused to be conveyed to the defendant Matthews as trustee, with power to make title to the premises as the defendant Nickerson might direct, and without the necessity of plaintiff's uniting in any conveyance that said trustee might make.

This purchase and arrangement, the bill alleges, was one step in a conspiracy formed by her husband with the defendant, Miss Carter, some time in the year 1880—and to which conspiracy the defendant Matthews subsequently became a party—for the purpose of defrauding the plaintiff of her interest in the proceeds of the sale of

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the Portland property, for the benefit of said Carter, to whom he was to be married after being divorced from the plaintiff; that, as the initial step in that conspiracy, her husband represented to her, in July, 1880, that he was much in debt, and that it would be in the line of economy if she would reside for a time in Europe, where the cost of living was slight and the facilities for educating their daughter abundant; that, although unwilling to be separated from her husband, she assented to his wishes, and, with her daughter, sailed for Europe on the 9th of July, 1880, her husband accompanying them to the steamer and parting from her with every manifestation of love and affection; that, immediately after her departure for Europe the defendant went to Philadelphia, and there rented rooms for the purpose of acquiring a pretended residence as a basis of proceedings for divorce in one of the courts of that city; that, after the expiration of the statutory period, to wit, on the 2d of May, 1882, while the plaintiff was still in Europe, he filed a libel for divorce, and by means of false and perjured testimony, and without her knowledge or consent, obtained, March 31, 1883, a decree of divorce from her; that of the institution of said suit and of said pretended decree the defendants Carter and Matthews had knowledge; and that, as soon as plaintiff was informed of those proceedings she returned to this country, and, in a suit brought for that purpose, she obtained, on the 9th of June, 1883, a judgment annulling the decree of divorce as having been procured by fraud and perjury.

The bill further charges that on the 2d of April, 1883, two days after said pretended divorce, her husband and Miss Carter went to the city of Baltimore, and were there married; that, on the 31st of May, 1883, he directed Matthews to convey, and he did convey, to said Carter, by the name of Nickerson, his title and interest in lot 2 in square 114, said Matthews and Carter, as well as her husband, being aware at the time of the pendency of the suit in Philadelphia to set aside the fraudulent decree of divorce; and that on the day last named her husband executed to said Lena a bill of sale of all his personal property in the city of Washington, including the household furniture, which the plaintiff and husband used in common prior to her going to Europe.

All of these acts, the bill charges, were in execution of a conspiracy between her husband and the defendants Matthews and Carter for the following purposes: 1, to get the plaintiff out of the country, beyond the reach and knowledge of what was going on; 2, to have the plaintiff divorced from her husband so that he could marry the defendant Carter; 3, to defeat the trusts upon which her husband held the Portland property and the proceeds of its sale, and to place the right and title to the same in the defendant Carter.

The defendants Nickerson, Matthews, and Carter, in separate answers, deny every material allegation in the bill relating to them respectively, except that the marriage of the latter with Major Nickerson at the time and place stated in the bill is admitted. They also severally plead, in bar of the relief sought, the statute of frauds of both the State of Oregon and the District of Columbia.

The statutes of Oregon provide:

"SEC. 771. No estate or interest in real property other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent, under written authority, and executed with such formalities as are required by law.

"SEC. 775. In the following cases the agreement is void unless the same, or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party to be charged, or by his lawfully authorized agent; evidence, therefore, of the agreement shall not be received other than the writing, or secondary evidence of its contents in the cases prescribed by law:

"1. An agreement that, by its terms, is not to be performed within a year from the making thereof.

"4. An agreement made upon consideration of marriage other than mutual promise to marry.

"6. An agreement for the leasing for a longer period than one year or for the sale of real property or of an interest therein.

"7. An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing." Oregon Code of Procedure, 1862 (1863), pp. 190 and 191, Tittle VIII, secs. 771 and 775; General Laws of Oregon (1845–1864), pp. 341 and 342, Title VIII, secs. 771 and 775; General Laws of Oregon (1843–1872), pp. 264 and 265, Title VIII, secs. 771 and 775.

The statutes upon which the defendants rely as being in force in the District of Columbia, and as applicable to the case, provide:

"SEC. 4. No action shall be brought whereby to charge . . . any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

"SEC. 7. And . . . all declarations or creations of trust and confidence, of any lands, tenements, or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect." 29 Charles II, 2 ch. 3, secs. 4 and 7; Alexander's British Statutes, p. 509.

We are not permitted by the evidence in this cause to doubt that the appellee Nickerson induced his wife to go to Europe, with her child, in order that he might, in her absence and without her knowledge, procure a decree of divorce from a court having no jurisdiction to grant it; or that, without her knowledge, he obtained such decree from the court in Philadelphia—in which city he acquired a merely fictitious residence—by making it appear that his wife had deserted him, and taken up her

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residence in Europe against his wishes, when, in fact, he induced her to go abroad, substantially directed all of her movements while away, and, in frequent letters, covering the entire period from the date of her departure up to the institution of the suit for divorce, expressed warm affection for his absent wife. Indeed, a few weeks after he commenced his suit for divorce he inclosed to his wife a draft for one thousand marks to cover her future expenses, his letter transmitting the draft being couched in such language as a faithful husband would use when communicating with his wife by letter. Nor can it be doubted that before the rendition of the decree for divorce an understanding was reached between him and Miss Carter that they would intermarry as soon as he obtained a decree divorcing him from his wife. It is difficult to conceive of a clearer case of wrong and perjury than is disclosed in the record upon the part of Major Nickerson toward his wife in reference to the proceedings instituted by him for divorce. If our decision depended upon the facts just stated we should have no hesitation in granting the relief the appellant seeks. But the court would be unmindful of its duty to administer justice according to the settled rules of law if it permitted the feelings naturally excited by the conduct of the husband in relation to that divorce to control its investigation of the primary question whether there was between him and his wife, prior to and at the time of their marriage, and as the consideration of the marriage, such an agreement as that set out in the bill; and, if so, whether the agreement is of such nature, or has been so clearly established, as to authorize a court of equity to give the relief asked. It is entirely consistent with the perfidy practiced by the husband toward the wife, in the matter of the fraudulent divorce, that no such agreement as that alleged was ever made as the consideration of their marriage.

If such an agreement was not made, or, supposing it to have been made, if it cannot, under the circumstances and the proof, be properly made the basis of a decree affecting the ownership of the lot conveyed by Matthews to the appellee Carter, the legal result cannot be changed by the fact that the husband, many years after the marriage, and by means of false evidence, obtained a divorce from his wife.

Even if the statutes of Oregon, where the agreement is alleged to have been made, or the statutes of Maryland, in force in this District, do not prevent relief being given in cases of fraud practiced by a defendant pleading the statute of fraud, or when part performance is relied upon to take the case out of the statute, we are constrained to hold, upon a careful scrutiny of all the evidence, that the proof of the existence of the agreement is not of that satisfactory character required by the recognized principles of equity. Whether specific performance shall be decreed in any case depends upon the circumstances of that case and rests in the discretion of the court. King v. Hamilton, 4 Pet., 328; Willard v. Taylor, 8 Wall., 564; Waters v. Howard, 1 Md., Chy. Dec., 112; Duvall v. Myers. 2 Id., 401. "Not, indeed," Mr. Justice Story says, "of arbitrary or capricious discretion, dependent upon the mere pleasure of the judge, but of that sound and reasonable discretion which governs itself as far as it may by general rules and principles, but at the same time which withholds or grants relief, according to the circumstances of each particular case, when these rules and principles will not furnish any exact measure of justice between the parties." 1 Story's Eq. Juris., sec. 742. One of these rules is that in cases of this character relief should not be granted, after an unreasonable delay, or unless the proof is clear and satisfactory both as to the existence of the agreement and as to its terms.

In our judgment the proof fails to show such an agreement between Nickerson and wife as could be made the basis of a decree in her behalf. The allegations of the bill are expressly denied by the answer; and the statements of the wife in her deposition are flatly contradicted by the husband in his deposition. The only other witness in the cause in behalf of the plaintiff is her mother, and the deposition of the latter was not taken until nearly fifteen years after her daughter married the defendant. It contains a detailed account of an interview with him at the time she visited Portland, in the spring of 1870, for the purpose of personally expressing her opposition to the marriage of her daughter to Major Nickerson. In recalling what then passed between herself and him she was not aided by any contemporaneous memorandum of what occurred. It is true that in her deposition, as well as in that of the appellant, are to be found such words and phrases as "agreement," "promised," "promised and agreed," "promise and agreement," "understood and agreed," "in consideration of marriage," and "marriage settlement and gift." But there is strong internal evidence in the depositions that these words and phrases—if not suggested by others familiar with their import—were not used or understood by the witnesses in their technical legal sense. Their evidence, in connection with all the circumstances of the case, especially the lapse of time, should be regarded as establishing, at most, only an honest belief and expectation upon the part of the appellant and her mother, before and at the time of the marriage, superinduced by the general conduct or loose expressions of the defendant that he intended, at some time after marriage, to provide his wife with a permanent home out of the proceeds of the sale of the Portland property. It is the case of a husband who, prior to marriage, induced in the mind of his intended wife expectations in reference to real property which, after marriage, he failed to meet, but in respect to which property he did not enter—and, perhaps, intentionally refrained from entering—into any distinct and binding agreement.

She purposely forebore, as her bill shows, from having the Portland property conveyed to trustees for her benefit, and permitted the title to remain in the husband in order that it might be easily handled and in the belief that he would act in good faith toward her. She relied upon his honor, and has been deceived. But those facts, however strongly they appeal to our sympathy, cannot justify the court in finding, upon the meager evidence in this cause, that there was an agreement upon his part, in consideration of marriage, to settle upon her either the

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property in Portland or the property purchased with the proceeds of its sale.

There is another serious obstacle in the way of granting to the appellant the relief she seeks. It is not proved with sufficient certainty that any part of the proceeds of the Portland property was, in fact, applied to the purchase of the lot in square 114. If it did not, there is no ground, in any view of the case, upon which a trust could be fastened upon that lot for the benefit of the appellant.

In view of what has been said it is unnecessary to consider the question so fully discussed by counsel and so elaborately examined in the adjudged cases as to whether marriage itself, standing alone, can be deemed part performance of an agreement as to lands, which otherwise could not be enforced with due regard to the letter and spirit of the statute of frauds.

Upon the whole case we feel bound to hold that the appellant has not established sufficient grounds for the relief asked.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

HARRIET A. FORD
v.
THE TRAVELLERS' INSURANCE COMPANY ET AL.

No. 8995. EQUITY DOCKET 23.

Decided May 14, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

An ordinary paid-up policy of life insurance effected by the husband on his life for the benefit of his wife is assignable by the wife during the life of the husband when the same is made with his concurrence.

The case is stated in the opinion.

EDWARDS & BARNARD for complainant.

ENOCH TOTTEN, WILLIAM A. MCKENNEY and E. B. HAY for defendants.

Mr. Justice COX delivered the opinion of the court.

I am requested to announce the opinion of the court in the case of Harriet A. Ford against the Hartford Insurance Company, Harrison, and others.

It appears that, as far back as 1871, this complainant had a paid-up policy for the amount of $2,208 on the life of her husband, Charles E. Ford, issued by the defendant insurance company. In July of that year this policy was transferred by Mrs. Ford to the defendant Harrison to secure an indebtedness contracted to him by her husband. With that particular indebtedness we have no concern.

Three years afterward, or about that time, in February, 1874, Dr. Ford contracted a new debt to Harrison of $2,400, which was evidenced by eight promissory notes of $300 each. To secure that debt Dr. Ford and his wife executed a deed of trust upon their domicile, the only property which they owned. That deed was subject to a prior incumbrance to the amount of $10,500, bearing 10 per cent. interest. At the same time the plaintiff, Mrs. Ford, alleges in her bill, and the facts clearly show, that it was understood that this policy of insurance then in the hands of Harrison should continue as the security for the new loan.

In December, 1874, Dr. Ford and his wife conveyed this house absolutely to Harrison—that is, by absolute deed—and parted with the equity of redemption, Dr. Ford then remaining in the house as tenant at a rent of $100 a month. This state of things continued about seventeen months, when the property was sold to Mrs. Mary Clemmer for $12,000, and then the house was vacated by Dr. Ford and his family.

Dr. Ford lived about eight years longer, the policy remaining in the mean time in the hands of Harrison. After his death Mrs. Ford claimed the policy, and, her demand not being acceded to, she filed this bill against Harrison. The decision of the court below was in favor of the complainant, and from that an appeal was taken to this court.

The important allegation of the bill is that the indebtedness of $2,400 from Dr. Ford to the defendant Harrison was paid off by the absolute conveyance made by Ford and his wife to Harrison in December, 1874. On the contrary, the defendant Harrison says that these parties were in great financial distress at that time; that they were largely in arrears for the interest on the first incumbrance and also for taxes and special assessments on this property; that they were threatened with suits by various creditors and were in danger, as they supposed, of being turned out of their property, and, at their special request, he took a title from them, absolute in form, but with the distinct understanding that it should still stand as a trust deed to secure the advances that he was compelled to make, to pay interest and taxes on the original loan of $10,500 and for taxes and expenses after that date, and as security for his debt; that such was the whole object of the absolute conveyance, there being no intention whatever to extinguish the indebtedness of $2,400.

The facts and circumstances proven and the correspondence of the parties put in evidence make it clear, to a demonstration, that Harrison's account of this transaction is correct. Of course the burden of proof is upon the complainant to show that this conveyance was in satisfaction of that debt. Looking at the conveyance itself, we find it does recite the satisfaction of this debt as a consideration. The notes were never surrendered, and, in the next place, Mrs. Ford made a new assignment, as a part of that very transaction, of this policy of insurance on her husband's life.

This deed is dated December 5, 1874. On the very day before, and clearly as a part of the same transaction, Mrs. Ford makes a new assignment of this life-insurance policy. It is sent on to the insurance company, reaching there, of course, after the deed of the house was put on record, and it is clearly a part of the same transaction.

Now, how that is consistent with the idea that this two-thousand-four-hundred-dollar debt was extinguished by that transaction it is difficult to say. Here is a new recognition of the debt and a new assignment as security. But that is not all. There is correspondence between the parties put in by the complainant herself, which is absolutely inconsistent with the idea that this

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conveyance was a settlement of the indebtedness.

There is a letter from Dr. Ford himself, in which he acknowledges the receipt from Harrison of large sums of money and shows his application of them, just exactly as Harrison says had been agreed upon, for the payment of large amounts of arrearages of interest, over $600, I think, and the payment of a large amount of taxes. And here are two letters put in from Harrison to Ford, in one of which he tells Dr. Ford of the amount he has assumed by accomodating him in that way and the annual burden that he has subjected himself to. He shows the interest he will be compelled to pay annually and that he will be left out of pocket, every year, $600 by this transaction entered into for the relief of complainant and husband, and asks him to see the first incumbrancer to ascertain if he will not reduce the rate of interest, so that his annual loss may be reduced to two or three hundred dollars instead of six hundred dollars. In one of the letters after the conveyance he speaks of "*our*" interest in this property, which is inconsistent with the idea that this conveyance was the satisfaction of that debt. Then, again, there is, on the date of the 11th of December, 1874, a chattel mortgage, made to another person, and apparently to secure another debt, covering the whole personal property and all that was in that residence, which exactly corresponds with and corroborates the statement which Harrison makes to the effect that they were in such pecuniary straits that their object was to cover up their property from the immediate pursuit of creditors and not to extinguish this indebtedness to him. So much for that part of the transaction.

Then, again, a fact relied on as evidence of the satisfaction of this debt is that there was found among the papers of Dr. Ford after his death a certificate from Harrison, to the effect that this deed of trust and the notes secured by it had been fully satisfied, and that was dated the 18th of May, 1876. Of course that paper, by itself, would look like an acknowledgment of the satisfaction of this debt. But it would at once strike anybody as a very singular way of evidencing the payment of this debt—a very unusual way. In the first place, the proper way to evidence the payment of a debt when the mortgagor conveys the equity of redemption to the mortgagee is for the latter to surrender the notes at the same time. This paper is dated seventeen months after this deed was made.

Another remarkable thing is that immediately afterwards a deed of release was executed by Harrison of the deed of trust which he first held on this property. Now, if a mortgagor means to convey the equity of redemption in satisfaction of his debt it is a very queer proceeding that the mortgagee should, seventeen months afterward, release to him the mortgage when he has no further interest in the property.

The explanation is clear. On the 17th of May the property was sold to Mrs. Clemmer, and she found the deed of trust made in favor of Harrison by Dr. Ford on record, and, of course, that had to be made to appear on record as satisfied. Harrison executed first the acknowledgment or certificate and afterward the deed of release for the sole purpose of discharging the apparent incumbrance upon the title so that Mrs. Clemmer could have a clear title. That was the sole object of the execution of this certificate and of the deed of release of his deed of trust, as plainly appears from the correspondence. This circumstance furnishes no evidence whatever that the debt itself had been paid by the absolute deed to him.

Now, then, did the sale to Mrs. Clemmer have any such result? As I have said before, it was agreed, when the absolute deed was made, that Dr. Ford should go into possession and pay $100 a month rent, and that was to pay the interest on the prior incumbrance, taxes, expenses, &c. The interest on this principal incumbrance itself was $1,050 a year, and if there had been no expenses, interest, or taxes to be paid there would have been left only $150 out of the rent applicable to the other debt. But there was, in fact, a large arrearage of interest and very heavy expenses and taxes, and the result was that in the seventeen months during which Dr. Ford lived in the house the rent paid by him did not cover those items, so that, when the property was sold to Mrs. Clemmer, Harrison, as he says, was out of pocket more than $1,700, and never has received one cent of principal or interest on account of his own debt; and that statement of his is credible, because there is evidence in the correspondence of the large amounts he had paid in interest in arrears, taxes, &c., in addition to the current interest on this prior incumbrance.

In addition to that I should remark that the notes given by Dr. Ford to Harrison never were called for or surrendered. The only excuse Mrs. Ford gives for not having called for them was that she neglected to do it. On the other hand, Harrison is asked why he never brought suit on those notes, and he replied that Dr. Ford was insolvent; that he held this policy of insurance, and that was the only thing he had to rely on. And he shows that at the date of Ford's death he had this $2,400 of notes, on which not a dollar of interest had been paid for eight years; that he was out of pocket on account of taxes and expenses he had paid over and above the proceeds he had received from Mrs. Clemmer, and was out of pocket, on the whole, some four or five thousand dollars.

But there arises a question of law, which is whether the policy was assignable. That is the only question of law in the case.

It is said that this is a Connecticut contract. It was a Connecticut company which gave this obligation, and the money was payable at the office of the company in Hartford. Therefore it is claimed that the character of the contract must be determined by the law of that State. The statute of that State says:

"Policies of insurance issued on the life of any person, expressed to be for the benefit of a married woman, whether the same be effected by herself or her husband, or by any other person on her behalf, shall inure to her separate use and benefit, and that of her or her husband's children, if any, as may be expressed in said policies, independently of any other person effecting the same in her behalf, his creditors or representatives; but this section shall not apply to insurances where the annual premium on the

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policy shall exceed the sum of $150, unless paid from the private property of the wife."

In the first place, the policy in question is not one of that class provided for by the statute. That section of the statute refers to policies on which there was an annual premium payable. But here was a policy paid up long ago, as far back as 1871 or sooner. It was not, therefore, one of the classes of policies referred to in this law.

In the next place, this statute does not make the policy non-assignable, and, besides, no decision of the courts of Connecticut makes it so. On the contrary, if any opinion is indicated it is in the other direction. The only Connecticut case cited to us is that of the Connecticut Mutual Life Insurance Company against Burroughs, in 34 Conn. In that case the policy was issued for the benefit of the wife if she should survive her husband, but if she should die before her husband, then for the benefit of the children. She undertook to make an assignment of the policy, but she died before her husband, and, of course, all interest of her's in the policy ceased, and it became the property of the children, and on that ground the court denied her relief. The court in that case say:

"The claim of the assignee must depend upon the validity of the assignment; for if the assignor, at the time of the assignment, had no assignable interest in the policy, or if she had an assignable interest which was contingent merely, and that interest has been defeated by the happening of her death before that of her husband, it seems quite clear that the assignee has no valid claim to the fund in question."

Then they refer to a case in New York, interpreting a similar statute of that State—the case of Eadie v. Slimmon, 26 N. Y., 15—and comment upon it in the following language:

"A policy was issued to a married woman on the life of her husband, similar in its provisions to the one now under consideration. The statute of New York on this subject is substantially like our own. She assigned the policy during the lifetime of her husband, but survived him. In a suit to which she was a party the court held that the instrument had no assignable quality. If we are to adopt the doctrine of that case as the law of this State it conclusively settles the question now before us; for the reasoning of the court seems to go so far as to hold that a policy of this description, prior to the decease of the husband, is absolutely and under all circumstances unassignable by the wife. That such should be the law applicable to a policy the premiums on which were paid by the husband certainly seems reasonable and just; while, on the other hand, if the wife paid the premiums from her own separate estate, *it is difficult to suggest a reason why she should not have the same power to assign her interest in the policy that she has to assign any other chose in action belonging to her.*"

And I might here remark that if the premiums are paid out of the husband's estate to the extent that the law allows, so that it becomes her separate estate, as this statute purports to make it, there is no reason why it should not be assigned. Then they go on to say:

"But in one respect that case is distinguishable from this. There the contingent interest of the wife became absolute by the death of the husband during her life; here that interest was defeated by her death during the lifetime of the husband. This distinction renders it unnecessary for us to determine the principal question involved in that case. For if it be conceded on the one hand that Mrs. Kendall had an assignable interest in the policy in question it must be conceded on the other hand that that interest was a contingent one, and that the contingency upon which it was to become absolute never has happened and never can happen."

I refer now to the case of Eadie v. Slimmon in 26 New York. There the question did arise whether a policy issued to the wife in the form described in the Connecticut case—that is, to the wife for life, and if she died before the husband, then to the children—(which is not the case in this policy) was assignable. The main question was whether an assignment had been procured by the wife by undue influence, and a long opinion was given on that question. The court held it was. In the conclusion of their opinon they say:

"The majority of my brethren" [Judge Smith says] "also think that the policy of insurance was not assignable by Mrs. Eadie. The policy was issued and taken under the act of 1840, entitled 'An act in respect to the insurance of lives for the benefit of married women.' We think the intent of the statute was to make these policies a security to the family of any married man and a provision for their use and benefit, and that this intent would be defeated if they were held to be assignable by the wife like ordinary choses in action belonging to her in her own right as her separate property."

Then upon a motion for a rehearing the same judge (Denio) said:

"We see no reason to change the opinion which we arrived at at the last term as to the assignable quality of the instrument. By the common law a person could insure his own life for any sum for which he might choose to pay the premium and which the insurers would engage to insure; but if one desired to insure the life of another he could only insure the interest which he had in such other life. If he undertook to insure a gross sum, and the contract was not susceptible of a construction which would limit the recovery to the actual damages sustained, the contract would be void under the statutes against betting and gaming. This principle the Legislature, by the act of 1840 (Laws, p. 59), relaxed in respect to insurance as affected by a married woman for any sum which she and the insurance company might see fit to contract for. It was provided that in the case of her surviving her husband the amount payable by the terms of the policy should be repayable to her for her own use, free from all claims of the representatives of her husband or of his creditors. There is another feature in the act which shows that it was an enabling and not a declaratory provision. By the general rules of law a policy on the life of one sustaining only a domestic relationship to the insured would become inoperative by the death of such insured in the lifetime of *cestui que vie;* or, if it could be considered as existing for any purpose after that event, it would be for the benefit of the personal representatives of the insured; but by this act the contract may be continued in favor of the children of the insured

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wife after her death. These features distinguish this case from that of an ordinary chose in action belonging to a married woman as her separate estate. The provision is special and peculiar and looks to a provision for a state of widowhood and for orphan children; and it would be a violation of the spirit of the provision to hold that a wife, insured under this act, could sell or traffic with her policy as though it were realized personal property or an ordinary security for money."

We observe that the great stress in this case was laid on this feature of the provision of the policy which indicates that it was intended as a security to the family, to the children, and not to the personal representatives. And that distinguishes it from the present policy. This is not of that description at all, but simply a naked policy in which the company undertakes to pay $2,208 to Harriet A. Ford, the wife, or her legal representative.

But, again, the decision in question does not undertake to fix upon the contract itself the feature of non-assignability. It simply expresses the policy of the State, as adverse to the assignment of this species of contracts, with a view to the protection of the orphan children upon the decease of their parents.

Another purpose, apparent on the face of the statute, is to put some restriction on the application of the means of the husband to this object. That is essentially local. The State of New York has no sort of interest in restraining husbands or protecting families outside of their jurisdiction, and the reason assigned for the decision would not apply to a contract entered into by parties not residents of that State and whose domestic relations were not under the control of the laws of that State. Therefore if this were a New York contract we should hold this opinion as inapplicable to this case.

But the decision of a New York court does not interpret the statute of Connecticut, and we are at liberty to give it our own interpretation. There is not, therefore, in our judgment, anything to distinguish this from any other chose of action. Whether it be regarded as a separate estate, in the sense of the married-women's acts, or in the contemplation of courts of equity, we must conclude that she had a right to assign it. If treated as a common-law chose in action she could assign it with the concurrence of her husband, and the evidence of his concurrence here is ample. It was the joint act of the husband and wife by which the assignment was made.

We think that the bill ought to be dismissed; and the decree, therefore, of the court below which awarded this money to her must be reversed.

A sold B a house, mill, and machinery, the title remaining in A till B's notes therefor were paid. By consent B moved them on his ground. A conveyed the notes to C as collateral security. Upon default in payment B gave C new notes secured by deed of trust on the articles. At a sale of them under the deed of trust C bought them and conveyed them to A on payment of his debt. *Held*, that they did not become part of the realty and A should have a reasonable time to remove them.—Harkey v. Cain, S. C. Tex., Nov. 15, 1887; 6 S. W. Rep., 637.

SUPREME COURT OF VERMONT.

BLANEY v. PELTON.

Decided April 15, 1888.

1. It is presumed that the holder of a negotiable note is a *bona fide* holder; and when he produces it in court and proves its execution he makes out a *prima facie* right of recovery and is not bound to fortify his title to the note beyond the presumption when the defense is an entire failure of consideration and the defendant fails in such defense.
2. The defendant executed his negotiable note in part payment for a printing press, and, having used it for several months in the precise kind of work for which it was purchased, he exchanged it for another machine, realizing for the press more than he was to pay for it. He only complained that it would not do the work so well and so advantageously as the vendor represented. *Held*, that the defendant's claim came far short of the defense of an entire failure of consideration.

Assumpsit upon two promissory notes.

Trial by jury, March term, 1887. Rutland County, Taft, J., presiding. Verdict directed for the plaintiff. Affirmed.

STATEMENT OF THE CASE.

The plaintiff introduced the notes in evidence and rested. The defendant then introduced evidence tending to show that prior to December 1, 1883, he had made a contract with the Goodwillie-Wyman Co., of Boston, Mass., to purchase of said company a printing press known as a No. 2 Whitlock press; that by the contract the defendant was to turn in toward said press one old Hoe press at $550 and a horse and other merchandise at $200, and that said Goodwillie-Wyman Co. took said property to Boston; that during the interval between the time of said contract and the time when said company could furnish the press sold the Goodwillie-Wyman Co. undertook to set up in the defendant's office in Rutland a No. 1 Whitlock press, for the use of the defendant, until they could deliver and set up the press sold; that a man was sent from Boston to set up the press sent up for temporary use, and while he was at work on said press, and some time after December 1, 1883, he was ordered to return home, as said Goodwillie-Wyman Co. had failed in business. The press was set up, but was not so as to work, and was not in condition to indicate whether it would work successfully or not.

The defendant's testimony further tended to show that when this notice was received that the Goodwillie-Wyman Co. had failed the defendant went to Boston to try to save the property that he had delivered to the Goodwillie-Wyman Co. on said contract, and while there he made a contract for the press then standing in his office in Rutland. The defendant then introduced a copy of a written order signed by him for said No. 1 press, and testified that, at the time of making said contract, the president of said Goodwillie-Wyman Co. represented to the defendant that said press would do any work any two-roller printing press would do and would run at the speed of one thousand impressions per hour; that, as part of this contract, the defendant executed the two notes in suit, and that the other property named in said order was the same property delivered as afore-

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said under the first above-named contract, and that said first contract was rescinded at the time of making this last contract.

The evidence of the defendant further tended to prove that the press purchased by this last contract was deficient in all the essential working qualities of a printing press; that the bed, which should be perfectly true, was uneven; that the cylinder was uneven and sprung; that the delivery of printed sheets would not work with the other parts, and that the ink-fountain was entirely useless, and that, as a printing press, it was entirely worthless and of no value.

The defendant testified, on cross-examination, that said press was of no value as a printing press, but that he kept it in his office for nine or ten months and used it more or less in his business; but that the extra help and expense of running it and the inferior character of the work it would perform rendered it of no value as a printing press. Among other witnesses the defendant called the foreman of his office, who testified to the condition of the press, and that it was of no value as a printing press, but, on cross-examination, said it would be of some value in a country office for ordinary small coarse work, like auction bills, but was of no value to defendant.

The defendant also introduced evidence that one George H. Robinson, of New York, was a stockholder and director of the Goodwillie-Wyman Co. up to or about to the time of its failure, and that he had advanced money to the company from time to time, and that all the property turned in by the defendant for said press and these two notes did not go into the hands of the receiver of said company, but all went into the hands of said Robinson, and that said Robinson paid no value for them except he applied them upon the indebtedness of the company to him. The defendant also claimed from the depositions of the plaintiff and of said Robinson, which are referred to, that the plaintiff paid no value for said notes, but received them as a gratuity from said Robinson a long time after one of them was due.

Judge POWERS delivered the opinion of the court.

This is an action of assumpsit upon two notes made payable to the order of the Goodwillie-Wyman Co. The defense is an entire failure of consideration.

When the plaintiff produced the notes in court and proved their execution he made out a *prima facie* right of recovery. The holder of negotiable paper is presumed in the first instance to be a *bona fide* holder.

If the defendant offers evidence tending to prove fraud in obtaining the note or an entire failure of consideration for it between the original parties the burden of proof is thereby cast upon the plaintiff to show that he was an innocent purchaser for value of the notes while they were current. This burden, however, is not cast upon the plaintiff until the consideration is impeached by the defendant. Hence no inquiry into the title of Robinson or the plaintiff is demanded until it is made necessary by the state of defendant's case.

This case is quite unlike Cragin v. Fowler, 34 Vt., 326, and Clough v. Patrick, 37 Vt., 421, cited by defendant. In those cases the thing purchased had no value whatever. The rule was stated by Judge Pierpoint, in Cragin's case, as follows: "The party has the right to that for which he bargained, substantially; and it must be of some value or he is not bound to pay for it."

If the article bought does not fully come up to the representations of the vendor, but still is an article of the kind bargained for and will perform the work for which it is designed, though less efficiently than represented, the purchaser in a proper case may have his action for deceit or false warranty. But this comes far short of the elements essential to the defense of an entire failure of consideration.

In Cragin's case the machine was bought as and for a machine to be operated by horse-power. It could not be operated at all by that power. If this press had been bought as and for a steam-power press, but could be operated only by hand-power, the case would be parallel with Cragin's case. The press, however, worked in the manner contemplated by the purchaser; and he only complains that it will not do the work contemplated so well and so advantageously as the vendor represented.

The defendant used it for several months, doing the precise kind of work for which it was purchased, though it came short of his expectations, and finally exchanged it for another machine, realizing in exchange more for the press than he was to pay for it. It would seem rather novel to hold that a purchaser who gets his money back for an article he buys can claim that he received no value. The defendant's own testimony disclosed this state of facts; hence no duty was cast upon the plaintiff to fortify his title to the notes beyond the presumption arising from his holding them.

Book Review.

Federal Decisions. Cases Argued and Determined in the Supreme, Circuit, and District Courts of the United States. Arranged by William G. Myer. Vol. XXI. Published by The Gilbert Book Company, St. Louis, Mo.

The 960 pages of this volume are devoted exclusively to the subject of land and land titles. The editor is the well-known author, Leonard A. Jones, esq., of Boston, which is ample guaranty that nothing has been left undone in the endeavor to produce a work of authority. Under the general head Mr. Jones has arranged the decisions in the following order: 1, those which relate to the public lands of the United States; 2, those which relate to the public lands of the States; 3, those which relate to private lands and estates therein; 4, those which relate to vendor and purchaser; 5, those which relate to actions for the recovery of possession of lands. These general subdivisions are further subdivided until the subject is minutely analyzed. This is as valuable, if not the most valuable, volume of the series and adds to the reputation of publisher, editor, and manager.

EQUITY can enjoin the commission of a continuous trespass.—Salem C. F. M. Co. v. Stayton W. D. & C. Co., U. S. C. C. (Oreg.), Dec. 19, 1887.

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THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

June 4.

11185. James F. Shea v. Sallie Shea et al. To appoint a trustee to sell part lot. Com. sol., M. J. Colbert.

June 5.

11186. Lucinda M. Gassaway, alleged lunatic, upon petition of Oceania Gassaway. Appointment of committee. Com. sol., J. H. Smith.

11187. Stephen H. Brown, alleged lunatic, upon petition of Margt. Brown. To appoint committee. Com. sol., P. E. Dye.

11188. Sarah J. Forrest v. Edw. Forrest. For divorce. Com. sol., C. Carrington.

June 6.

11189. Gussie R. Cox v. Eugene R. Cox. For divorce. Com. sol., C. S. Wilson.

11190. Edward Devlin v. The German-American Fire Insurance Co. et al. For new trustee. Com. sol., H. H. Wells, jr.

11191. Clara A. Beale v. Edw. M. Beale. For divorce. Com. sol., C. Carrington.

June 7.

11192. Benjamin Davis et al. v. Joseph Gamble and wife et al. Com. sols., Twombley, Wilmarth and Storrs.

June 8.

11193. Charles Baker v. Mary Ann Baker. For divorce. Com. sol., F. W. Jones.

11194. Annice Sammons, infant, upon petition of Joseph H. Sammons. To appoint a guardian. Com. sol., E. A. Newman.

11195. Albert W. Thorn v. Sarah S. Thorn. For divorce. Com. sol., C. Carrington.

June 9.

11196. Saul S. Henkle v. George B. Wilson et al. For release of trust and to quiet title. Com. sol., W. J. Miller.

CIRCUIT COURT.—New Suits at Law.

June 5.

28725. Lewis J. Davis et al. v. Albert C. Stevens et al. Note, $1,900. Plffs attys, Carusi & Miller.

June 6.

28726. George M. Barker v. Abram F. Barker. Note, $100. Plffs attys, Same.

28727. William Mayse v. Anna C. Meier. Judgment of Justice Strider, $52.50.

28728. David Walker et al. v. Frank H. Trusdell et al. Note, $400. Plffs attys, Carusi & Miller and Wilmarth.

June 7.

28729. Georgiana F. Miles v. Lester A. Bartlett. Note, $4,000. Plffs attys, Edwards & Barnard.

28730. Marvin Eastwood v. Benjamin Cooley. Note, $150. Plffs attys, Newton & Lavender.

28731. George W. Warfield et al. v. Joseph C. Lee. Notes, $700. Plffs atty, F. T. Browning.

28732. James B. Lambie v. Edward Caverly. Note and account, $377.85. Plffs attys, McKenney and AtLee.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mabel Howell et al. v. Samuel G. Muir. } In Equity. 10717.

It is, by the Court, this 12th day of June, A. D. 1888, ordered that the offer to purchase the real estate in said case mentioned, made by Alfred Richards, and reported by L. Cabell Williamson, Trustee, be, and the same is hereby, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of July, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 13th day of July, A. D. 1888.

The report states the amount offered to be $2,600.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

24 By H. W. HODGES, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza S. Ray, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 24th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of May, 1888.

EDWARD F. QUALTROUGH,
ROSS LESLIE RAY, 1901 F st. n. w.,
Executors.

24 John Selden, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Lippert, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1888.

MAGDALENA LIPPERT, Ex'x,
Alley between G and H and 6th and 7th sts. n. e.

24 No. 3086. Ad. D. 14. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of June, 1888.

William H. H. Gorham v. Henry H. Dudley, jr., et al. } No. 11079. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Henry H. Dudley, jr., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee to release sublot 54, sq. 361, in the city of Washington, D. C., from a deed of trust, recorded in liber No. 850, fol. 415, to Henry A. Duncanson and Henry H. Dudley, trustees, both deceased, on ground that the indebtedness secured has been paid.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

J. Stanley Brown et al. v. Harriet Abbot. } No. 11136. Eq. Docket No. 28.

On motion of the plaintiffs, by Mr. J. H. Ralston, their solicitor, it is ordered that the defendant, Harriet Abbot, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare deed to Harriet Abbot, recorded in liber 1253, folio 303, &c., of the land records of the District of Columbia, a cloud upon title to so much of lot 29, S. P. Brown's subdivision of Mt. Pleasant as is claimed by plaintiffs herein and specifically described in bill of complainant herein, and for injunction, &c.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 8th, 1888.

In the matter of the estate of Jackson Lackey.

Application for Letters of Administration on the estate of the said deceased has this day been made by John W. Major and others, who pray that such letters may be granted to James S. Edwards.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

24 Edwards & Barnard, Proctors.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Obedience McKenney**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

C. C. McKENNEY, Adm'r, 321 G st. s. e.

24 No. 3111. Ad. D. 14. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

Mary Berry v. **Franklin Berry.** } No. 11151. Eq. Docket 28.

On motion of the plaintiff, by Mr. B. F. Leighton, her solicitor, it is ordered that the defendant, **Franklin Berry**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant on the grounds of cruelty and desertion.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Edward Parker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of June, 1888.

CARRIE V. PARKER, 471 H st. s. w.,
C. C. MEADOR, 908 13th st. n. w.,
Fitnam & Scaggs, Proctors. Administrators.

24 No. 3116. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William T. Ware**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of May, 1888.

HUMPHREY ⋈ WARE, Adm'r, 609 B st. s. e.

Irving Williamson and Campbell Carrington, Proctors.

24 No. 3080. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Samuel H. Giesy**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1888.

24 CALDERON CARLISLE, Adm'r c. t. a.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Margaret Walker et al. v. **Lillie M. Walker et al.** } No. 11,064. Eq. Docket 28.

The Trustee, William W. Boarman, appointed in this cause, having reported the sale of sub-lot 23 (of the subdivision of W. T. Walker et al.), in square two hundred and ninety-seven (297), to James W. Yates, for the sum of $2,680 cash, it is thereupon, this 29th day of May, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named day. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

22 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 2d, 1888.

In the case of **Henry J. Gross**, Administrator of **Frances Frantzkee**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 22d day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

23 No. 2788. Ad. D. 13. Jesse H. Wilson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Thomas Hampson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1888.

MARTHA R. HAMPSON, Adm'x,
U. S. Geological Survey.

23 No. 3102. Ad. D. 14. S. R. Bond, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Albert W. Bagnam et al. v. **Peter L. Bagnam et al.** } Eq. No. 10668.

It appearing to the Court that no objection has been made to the order nisi passed herein on the 3d day of May, A. D. 1888, but that publication has not been made as provided by said order, it is further ordered, this 6th day of June, 1888, that the sale reported by the Trustee be ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 21st day of June, A. D. 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

23 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary Ann Johnson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1888.

CAROLINE JOHNSON, Ex'r,
1619 L st. n. w., Washington, D. C.

23 No. 2919. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 5th, 1888.

In the matter of the estate of **Robert E. Moore**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the estate of the said deceased has this day been made by Carlotta M. Moore.

All persons interested are hereby notified to appear in this Court on Friday, the 15th day of June next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once in the Washington Law Reporter and three times in the Washington Critic previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

23 No. 3073. Ad. D. 14. Wm. F. Mattingly, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ezekiel B. Elliott, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

23 LUCRETIA ANN ELLIOTT, 1210 G st. n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Birney
v.
Uriah H. Painter et al. } No. 10977. Equity.

On consideration of the report of the trustees for sale in this cause, it is, this 28th day of May, 1888, ordered that the sale of lot 20, square 633, to Ida U. Marshall, at the price of $1.92½ per square foot, be confirmed, unless cause to the contrary be shown on or before the 29th day of June, 1888; and it is further ordered that the offer of said Ida U. Marshall to purchase at the price of $1.92½ per square foot lot 19 and the west five feet front on B street of lot 18 in place of lot 22, bid for by her at the auction sale held by said trustees, be accepted by said trustees, and such sale will be confirmed, unless cause to the contrary be shown on or before said 29th day of June next.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

W. S. COX, Justice.

A true copy. Test: R. J. MEIGS, Clerk.
22½ By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza S. Ray, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 24th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of May, 1888.

EDWARD F. MALTROUGH,
ROSS LESLIE RAY, 1901 F st. n. w.,
Executors.

22 John Selden, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Johnson
v.
Julia Johnson. } No. 10917. Eq. Doc. 27.

The Trustee, Tallmadge A. Lambert, appointed in this cause, having reported the sale of the following property, to wit, lot lettered "A" of D. A. Gardiner's subdivision of certain lots in square numbered 214, in the city of Washington, in said District, containing about 2,004½ square feet, to James T. Bradford, at and for the sum of one dollar and fifty cents per square foot, it is therefore, this 26th day of May, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named date.

The sale aggregates $3,006.75.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,
22 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth Lowe, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of May, 1888.

SUSAN B. LATIMER,
ANNIE J. ADAMS,
Executrices.

22 No. 3076. Ad. D. 14. Mason N. Richardson, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

John George Henry et al.
v.
Sophia Bouvet et al. } Equity No. 11037.

Julius A. Maedel, the Trustee appointed by the decree of Court in this cause to sell the property involved therein, being part of lot number eight (8) in square 481, beginning for the same on the line of Sixth street west at the distance of forty (40) feet south from the northwest corner of said lot and running thence south twenty (20) feet, thence due east 93 feet and 4½ inches, thence north 20 feet, and thence west 93 feet and 4½ inches to the place of beginning; also parts of lots 21 and 22, in Richardson's subdivision of lots in the square numbered and described as square west of square 553, beginning for the same at a point in the west line of Third street west forty-two (42) feet south from the northeast corner of lot numbered 19 in said subdivision, and running thence south with the west line of said street 16.97 feet, thence west 53.73 feet to an alley, thence northwesterly with the east line of said alley 16.97 feet, and thence easterly 54.97 feet to the place of beginning, in the city of Washington, District of Columbia—having reported that he has sold the said property, pursuant to notice, at public auction, the aforesaid part of lot 8 in square 481, to Mrs. Auguste Reiter, for the sum of thirty-three hundred and fifty dollars ($3,350.00), and the aforesaid parts of lots 21 and 22 in square west of square 553 to Joshua B. Devan, for the sum of twelve hundred and thirty dollars($1,230), and that the purchasers have complied with the terms of sale, it is, this 26th day of May, A. D. 1888, ordered, adjudged, and decreed that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said 26th day of June, A. D. 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk, &c.
22 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 1st, 1888.

In the case of Hattersly W. Talbott, Executor of Joseph H. Bradley, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 22d day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
23 No. 2705. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary Bryerly, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1888.

MARVIN EASTWOOD, Ex'r, No. 626 E st. n. w.
22 No. 3061. Ad. D. 14. Wm. P. Bell, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Baltimore, Maryland, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Mary A. Gihon, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of May, 1888.

JOSEPH BOWES, Ex'r,
1705 Bolton st., Baltimore, Md.
22 No. 2510. Ad. D. 13. I. G. Kimball, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John A. Graham**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of May, 1888.

WILLIAM C. GRAHAM, Ex'r, 823 13th st. n. w.

22 No. 3067. Ad. D. 14. J. H. Ralston, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 2d day of May, 1888.

Emma Johnson v. John H. Cook, jr., et al. } No. 11,119. Equity Docket 28.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendants, **John H. Cook, jr.**, and **Joseph T. Settle**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the deed of trust dated on the 3d day of June, 1872, and recorded in liber 691, folio 164, the same having been given by Emma Johnson and her husband to John H. Cook, sr., now deceased, as Trustee to secure defendant Settle in the sum of $250.00 released.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

21 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

May 22d, 1888.

In the case of William W. Boyce and Abner Kingman, Executors of **Ellab Kingman**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 15th day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

21 No. 1180. Ad. D. 10.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of May, 1888.

Sarah M. Rea v. Richard F. Rea. } No. 11103. Equity Docket.

On motion of the plaintiff, by Mr. T. H. Fitnam, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii on the ground of desertion for an uninterrupted period of over six years.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

22 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of May, 1888.

John Tynan v. Mary Brown. } No. 11,129. Equity Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, **Mary Brown**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest title to lot 3, sub. of lots 10, 11, and 12, in square 198, Washington, D. C., and vest same in complainant.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

21 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William H. Scott**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of May, 1888.

AMANDA J. SCOTT, Adm'x, 1238 I st. s. e.

22 No. 3075. Ad. D. 14. H. T. Taggart, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of May, 1888.

Cordelia Skidmore et al. v. James Sands et al. } No. 10,803. Equity.

On motion of the plaintiffs, by Mr. E. A. Newman, their solicitor, it is ordered that the defendant, **John C. Sands**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute Trustees in place of William Bayliss and Thaddeus E. Sands, both deceased, in two certain deeds of trust; for decree adjudging certain indebtedness to have been paid, and directing Trustee to release trust securing same.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

21 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Leonora J. Briggs et al. v. Ignatius G. Combs et al. } No. 10,819. Equity Docket 27.

The Trustees, Daniel O'C. Callaghan, Eugene Carusi, and James S. Edwards, appointed in this cause, having reported the sales of the following property, to wit, part of original lot 1, in square 461, 604 Pa. ave. n. w., unto Patrick Moore, at and for $28,000; sub-lot F, in square 380, No. 920 Pa. ave. n. w., unto William H. Combs, at and for $13,725.00; part of original lot 6, in square 380, Nos. 928 and 930 Pa. ave. n. w., unto David Leverone and Stephen Gatti, at and for $17,825.00; sub-lot A, in square 349, No. 1000 Pa. ave. n. w., unto Daniel Loughran, at and for $22,200.00; part of lot 15, in square 374, No. 918 I st. n. w., unto Charles G. Thorn, at and for $15,350; sub-lot 10, in square 341, No. 1124 10th st. n. w., unto William H. Combs, as Trustee for the wife and children of Ignatius G. Combs, at and for $5,000; sub-lot 11, in square 341, No. 1126 10th st. n. w., unto Myron M. Parker, at and for $5,000; part of sub-lots 4 and 5, in square 344, No. 810 10th st. n. w., unto Adajah Behrend, at and for $4,275.00; the south 19 feet 10 inches of said sub-lot, 4 in square 344, containing about 1980 square feet, unto William H. Combs, at and for $2.17½ per square foot; and lot 22, in square 16, unto Thaddeus W. Patchin, Trustee, at and for 20c. per square foot, it is thereupon, this 16th day of May, A. D. 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named day.

The sales aggregate $116,866.70. W. S. COX, Justice.

A true copy. Test: R. J. MEIGS, Clerk.

21 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Edward P. Davis et al. v. James S. Davis et al. } Eq. No. 10257.

Consolidated.

James S. Davis et al. v. Edward P. Davis et al. } Equity No. 10576.

George E. Hamilton, Trustee, having reported that he has sold the property mentioned in these proceedings, to wit, sub-lot lettered "L," in square numbered four hundred and sixty (460), to Samuel F. Merrill, for thirty-seven thousand dollars ($37,000), it is ordered, this 26th day of May, A. D. 1888, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 26th day of June, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

22 By M. A. CLANCY, Ass't Clerk.

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Alabama Revised Code, 1867.
Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
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Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

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Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
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Foster on Scire Facias, 1857.
Gilbert on Devises.
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Hare on Discovery.

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Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
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Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
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VOL. XVI. - - - - - - - No. 25
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JUDGE STORY once said that "the law is a science of such vast extent and intricacy, of such severe logic and nice dependencies, that it has always tasked the highest minds to reach even its ordinary boundaries." The recent spring harvest of law graduates, most of whom are destined for the bar, indicates how small an effect such a statement has in discouraging applicants for the honors and emoluments which always await successful members of the legal profession. The above quotation from Judge Story has recently been characterized by Judge Cooley as a rhetorical exaggeration rather than a plain statement of fact; and, although we agree with him, we desire to caution our young friends against imagining that because they know, for instance, the rule in Shelley's case by heart and have at their tongues' ends analyses and definitions that all worth knowing at law is learned. The time already spent in study, if it has been used to good advantage, is of course valuable to them, but it has been like sauntering over a level country, through green fields, and by running streams compared with the rugged ascent that confronts them now. Let none of them think that natural gifts will enable him at the proper opportunity to vault into public favor and fame as Erskine did in Rex v. Baillie. He was an exception to the rule; and it must, moreover, ever be borne in mind that he was the hardest of students. Genius is a great thing in its way. It could plan the Cathedral of St. Peter, but without vast labor that celebrated pile, which has gladdened the eyes of countless thousands, would have remained but as a conception.

Roger A. Pryor, in his address to the graduating class of the Albany Law School, eloquently and truthfully pictures the labors and difficulties which beset the young lawyer's path:

"'The immortal garland is not to be run for without dust and heat,' and the victory you are to achieve will be the crown and recompense of infinite toil, of obstacles overcome, of high faculties exerted to the utmost effect, of many a miscarriage and much humiliation, of the solicitations of pleasure spurned for nobler but less attractive objects of desire, of a life consecrated in all its energies to the single aim of eminence and distinction in your chosen profession. But to the aspiring and resolute spirit the frown of difficulty and danger is but a challenge to increase of exertion and the trumpet-call of ambition of more potency than all the beckoning blandishments of indolence and ease.

"To sustain, then, the efforts and privations exacted as the condition of success at the bar you must be animated by an enthusiasm for your profession—an enthusiasm born not merely of a passion for its distinctions, but nourished as well by an eager and insatiate delight in the study of the law. An avidity for the prizes of the profession is undoubtedly a powerful impulse in its pursuit, but the more constant as well as the nobler motive is a love for the profession itself. If you have embraced the law with the ardor of a genuine affection, if you be truly enamored of her austere and rugged beauties, if you be resolved to woo her with the assiduity of a heartfelt devotion be assured that you will win her and that she will repay your fidelity by a revelation of charms which she discovers only to her unselfish suitors, and by a fruition of reward which no other profession so profusely lavishes upon its votaries. 'If you love me you will find me out,' was the animating assurance of the fair doctor of Padua; and Tully tells us that 'without a passionate inclination and an ardor like that of love no man ever achieved anything great, especially distinction as an advocate.' Enthusiasm, I repeat with emphasis—enthusiasm in the study of your profession, is the first and fundamental condition of success in its pursuit."

SUPREME COURT OF THE UNITED STATES.

PREPARED E. S. MCCALMONT.

ZENAS C. ROBBINS, Appellant,
v.
CLARENCE H. CLARK ET AL., Executors and Trustees of Edward A. Rollins, Deceased.

Decided May 14, 1888.

Appeal from the Supreme Court of the District of Columbia.

Construction of contract for the purchase of property southeast corner of F and Seventh streets northwest. Decree of the court below reversed.

Mr. Justice BRADLEY delivered the opinion of the court.

The bill in this case was filed on the 25th of October, 1883, by Edward A. Rollins, of Philadelphia, against Zenas C. Robbins, of the city of Washington, to recover $122,000, with interest, and, on the failure of Robbins to pay the same to have certain property in Washington, of which Rollins claims to be mortgagee in possession, sold to satisfy said claim. Rollins, the complainant, claims title to the matter in suit, by purchase in November, 1880, from one Keyser, the receiver of the German-American Bank, and said bank derived title from the German-American Savings Bank of Washington by purchase in October, 1877; and the latter acquired their principal interest in the matter from John Hitz, William F. Mattingly, and Charles E. Prentiss by deeds dated in May and June, 1875, the said Hitz, Mattingly, and Prentiss having procured

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the said interest for the said savings bank in the manner hereafter mentioned. The transactions out of which the controversy took its rise were as follows:

In 1873 the defendant, Zenas C. Robbins, was in possession of the property known as the Federal Building, situated on the southeast corner of Seventh street and F street northwest, in the city of Washington, immediately opposite the Post-Office Department building, being 100 feet on Seventh street and 129 feet 3½ inches on F street. Part of this property, namely, the 100 feet front on Seventh street and 40 feet deep on F street he owned in fee simple; the rest of it, 89 feet 3½ inches on F street and 100 feet deep, lying immediately in rear of the first part, he held by leases, with contracts giving him the privilege of purchasing the fee at any time during the continuance of the leases. This leasehold portion was divided into four lots fronting on F street, and each running back from F street 100 feet in depth, and he had a separate lease and contract for privilege of purchase on each, the rent of each being $60 per month, amounting to $2,880 per annum for all four lots: and the purchase prices, at which he had the privilege of purchasing the lots, were, respectively, $8,000, $12,000, $12,000, and $10,000, the whole amounting to $42,000. The lot owned by Robbins in fee, fronting on Seventh and F streets, was incumbered by two mortgages or deeds of trust in the nature of mortgages, one for $10,000, held by one Daniel Low, and the other for $25,000, held by the Mutual Benefit Life Insurance Company of New Jersey. There was also a judgment lien of $10,500 on the leasehold property.

In or about August, 1873, the Board of Public Works of the city of Washington cut down the grade of the streets around Mr. Robbins's corner several feet and rendered the buildings on his property somewhat insecure. The board pretending that they were in danger of falling, in October, 1873, ordered them to be taken down and removed. Robbins remonstrated, and some arrangement was made for strengthening them. Robbins claimed damages against the city for the injury done to his property, and an award of $4,098 was afterward made and paid to the bank after it came into possession of the property, as hereafter mentioned.

On the 10th of September, 1873, Hitz, the president of German-American Savings Bank, and in its interest, made a contract with Robbins to purchase the whole property, of which the following is a copy:

"WASHINGTON, D. C., *September* 10, 1873.

"Agreement between Zenas C. Robbins and John Hitz, both of the city of Washington, District of Columbia.

"The said Robbins does hereby agree to sell unto the said Hitz, his heirs or assigns, the real estate at the northwest corner of square numbered four hundred and fifty-six (456) in the city of Washington, D. C., for the sum of $170,000, said property fronting one hundred (100) feet on Seventh street and one hundred and twenty-nine (129) feet four and one-half (4½) inches, more or less, on F street. Forty (40) feet on F street, at the corner of Seventh street, by one hundred (100) feet, more or less, in depth, is owned by said Robbins in fee. Twenty (20) feet on F street, by one hundred (100) feet in depth, more or less, is a leasehold, with privilege of purchase, for $10,000.00. Twenty-three (23) feet on F street by one hundred (100) feet in depth, more or less, is a leasehold, with like privilege, for $8,000.00. Twenty-three (23) feet on F street by like depth is leasehold, with like privilege, for $12,000.00. Twenty-three (23) feet four and one-half (4½) inches on F street by like depth is leasehold, with like privilege, for $12,000.00. Said sale is to date as October 1, 1873.

"All taxes upon said property are to be paid by said Robbins, including the taxes for the year ending June 30, 1873, and all rents up to October 1, 1873, are to be received by him, provided none of said rents are payable in advance. All rents due on said leasehold property up to said October 1 and all interest on incumbrances are to be paid by said Robbins.

"All rents subsequent to said October 1 are to be received by said Hitz; said Hitz is to assume the incumbrances on said property, viz:

Deed of trust to Daniel Low.....	$10,000 00
Deed of trust to Mutual Benefit Life Insurance Company, Newark, N. J.	25,000 00
Purchase-money under Larner lease..	10,000 00
Purchase-money under Gideon	8,000 00
Purchase-money under Shanks.....	12,000 00
Purchase-money under lease from executors of Jacob Gideon.....	12,000 00
	77,000 00
And the balance in cash or its equivalent.....	93,000 00
	170,000 00

"Any other incumbrances are to be paid by said Robbins, and the conveyance to said Hitz is to be free from any dower right in the wife of said Robbins.

"The purchase by said Hitz is conditional on his approval of the title to said property and the increase by the German-American Savings Bank of its capital stock according to law.

"Z. C. ROBBINS. [SEAL.]
"JOHN HITZ. [SEAL.]"

Robbins in his testimony says that immediately after signing this contract he went to Virginia to visit some friends and did not return until the 1st of November, 1873. He says that he then found the bank in possession of all the property, and proceeds as follows:

"A few days after my return from Virginia Mr. Hitz came to me and made me this proposition: He said that if I preferred to change the sale into a lease of the property perhaps we could make a new negotiation, and he made this proposition—that he and his associates, Mr. Mattingly and Mr. Prentiss, would take the property on a ten years' lease; would pay the purchase-money under the four leases; would pay the incumbrances of record, amounting to $35,000; would pay me $600 a month during the term of the lease; pay all the taxes that might be assessed on the fee-simple property and leasehold estates, and would relieve me of all care and responsibility, expense, and charges of every name, nature, and description relating to the fee-simple and the leasehold estates during

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the whole term of the lease, provided I would embody in the lease the privilege of the purchase of my fee-simple property by the lessees for the sum of $93,000 at any time during the term of the lease. Another provision of the contract was—he gave me the option of a conveyance of the four leasehold estates by paying the several amounts of purchase-money named in the leases, with 8 per cent. interest from the date of payment."

Thereupon the first agreement was abandoned and the following agreement and lease, upon which the present rights and obligations of the parties depend, was entered into. We set it out at large, because it is the foundation of the whole controversy in the present suit, and almost every part of it is important in settling the rights of the litigants:

"This indenture, made this 25th day of October, A. D. 1873, by and between Zenas C. Robbins, of the first part, and John Hitz, William F. Mattingly, and Charles E. Prentiss, of the second part, all of the city of Washington, District of Columbia.

"Whereas the said party of the first part is seized in fee simple of all that certain parcel of land in square numbered four hundred and fifty-six (456), in the city of Washington, D. C., contained within the following metes and bounds: Beginning for the same at the northwest corner of said square and running thence east along the line of F street forty (40) feet, and running south with this width one hundred (100) feet, it being the same that was conveyed to the said party of the first part by George S. and Juliana Gideon, executors of Jacob Gideon, deceased, by deed dated July 21, 1869, and recorded in Liber D, No. 10, folio 288 *et seq.*, of the land records of the District of Columbia;

"And whereas the said party of the first part has a leasehold interest in a certain part of lot numbered fourteen (14) in said square, particularly described in a certain indenture of lease from George S. Gideon, trustee for Catharine C. Gideon, to the said party of the first part, dated November 30, 1864, and duly recorded in Liber N. C. T., No. 52, folio 101, *et seq.*, of said land records, with the privilege of purchasing said property in fee simple for the sum of eight thousand ($8,000) dollars, and has also a leasehold interest in a certain other part of said lot numbered fourteen (14), particularly described in a certain indenture of lease from Catharine N. Shanke and John Hitz and wife to the said party of the first part, dated May 31, 1865, and duly recorded in Liber N. C. T., No. 57, folio 456, of said land records, with the privilege of purchasing said property in fee simple for the sum of twelve thousand ($12,000) dollars; and has also a leasehold interest in a certain other portion of said lot fourteen (14) and a part of lot numbered fifteen (15) in said square, particularly described in a certain indenture of lease from George S. and Juliana Gideon, executors of Jacob Gideon, deceased, to the said party of the first part, dated May 31, 1865, and duly recorded in Liber N. C. T., No. 59, folio 128, *et seq.*, of said land records, with the privilege of purchasing said property in fee simple for the sum of twelve thousand ($12,000) dollars; and has also a leasehold interest in a certain part of lot numbered thirteen (13) in said square, particularly described in a certain indenture of lease from George S. Gideon, trustee for Chistiana Larner, to the said party of the first part, dated November 30, 1864, and recorded in Liber N. C. T., No. 52, folio 106, *et seq.*, of said lands records, with the privilege of purchasing said property in fee simple for the sum of ten thousand ($10,000) dollars, the whole of said property, fee simple, and leasehold interests, having a front on Seventh street west in said square of one hundred (100) feet, and on F street north of one hundred and twenty-nine (129) feet three and one-half (3½) inches:

"Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained to be paid down and performed by the said parties of the second part, and the survivor of them, his heirs, executors, administrators, or assigns, does hereby assign, transfer, and set over unto the said parties of the second part and the survivors and survivor of them, his executors, administrators, and assigns, all said leasehold interests in said several parcels of land and said leases, and the unexpired portion of said several terms, together with all the rights and privileges, and subject to the obligations in said several leases contained, and does also hereby demise, lease, and to farm let unto the said parties of the second part and the survivors and survivor of them, his executors, administrators, and their and his assigns, all of said parcels of land so held in fee simple as aforesaid by the said party of the first part, for the term of ten years, from and after the 1st day of November, A. D. 1873, and thence next ensuing, and fully to be complete and ended, they and he yielding and paying unto the said party of the first part, his heirs and assigns, the sum of six hundred ($600) dollars per month on the first day of each and every month during the said term, and observing and performing all and singular the covenants and agreements set forth in these presents on their and his part to be observed and performed; and the said parties of the second part, for themselves and each of their heirs, executors, and administrators, do hereby covenant with the said party of the first part, his heirs and assigns, in manner following, to wit:

"That they, the said parties of the second part, and the survivors and the survivor of them, his heirs, executors, and administrators, and their and his assigns, shall and will pay or cause to be paid said monthly rent as hereinabove stipulated, and shall and will pay and cause to be paid the incumbrances of record against said property, or any portion thereof, the same being two deeds of trust of twenty-five thousand and ten thousand dollars, respectively, and shall and will exercise the said several privileges of purchasing in fee simple granted in said leases by paying or causing to be paid said several amounts of purchase-money as provided in said leases, and shall and will pay or cause to be paid all taxes and assessments hereafter levied or imposed upon said property or any portion thereof; and the said party of the first part, for himself, his heirs, executors, administrators, and assigns, does hereby covenant with the said parties of the second part and the survivors and survivor of them, his heirs, executors, administrators, and their and his assigns, that he, the said party of the first part, his heirs or assigns, shall and will,

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at any time within said term of ten years, convey unto the said parties of the second part and the survivors and survivor of them and his heirs and their or his assigns, in fee simple, said parcels of land so held in fee simple as aforesaid by the said party of the first part, free and discharged from all right of dower on the part of the wife of the said party of the first part, of the payment to him, the said party of the first part, or his heirs, executors, administrators, or assigns, of the sum of ninety-three thousand dollars; and, further, that he, the said party of the first part, has full and lawful right to execute these presents, and that he, his heirs, executors, administrators, and assigns, will at any and all times hereafter, when requested so to do, execute and deliver any other or further assurance in law to the said parties of the second part and the survivors and survivor of them, his heirs, executors, and administrators, and their and his assigns, which their or his counsel learned in the law may advise, devise, or require; and it is hereby mutually undertsood and agreed by and between the parties hereto as follows, viz: The said party of the first part or those claiming under or through him shall pay all taxes and assessments against or upon said property or any portion thereof up to November 1, 1873, including the *pro rata* of taxes to this date for the year ending June 30, 1874, and shall also pay or cause to be paid interest on said incumbrances amounting to thirty-five thousand dollars up to said 1st day of November, and also all rents in leasehold interests to said November 1, and shall also pay or cause to be paid any and all other incumbrances that may be upon or against said property or any part thereof. Should the said parties of the second part or those claiming under or through them be compelled to pay any sum or sums of money which under these presents ought or should be paid by the said party of the first part or those claiming under him, then the same, with interest at the rate of 8 per cent. per annum from the date or dates of payment, shall be a lien upon said property. Should any one of the buildings on said parcels of land or a material portion thereof fall, either from its present condition or in attempting repairs upon the same, then, at the option of the said parties of the second part or those claiming under or through them, this indenture shall be held null and void, and any moneys expended shall be a lien upon said property and be refunded by the said party of the first part and those claiming under or through him, with interest as aforesaid. Should the said parties of the second part or those claiming under or through them fail to exercise said privileges of purchasing the said fee-simple interest in said property so held by said Robbins within said term of ten years from November 1, 1873, then the said party of the first part, his heirs or assigns, shall be entitled to a conveyance of all of said property by refunding within one year from the expiration of said term of ten years all sums of money paid by the said parties of the second part or those claiming under them, with interest at the rate of 8 per cent. per annum in the purchase of the fee simple or any portion of said property and in relieving the same of incumbrances created by the said party of the first part. The said parties of the second part and those claiming under or through them shall have the right and privilege of tearing down, altering, or repairing any and all of the buildings on said premises, and of rebuilding or repairing, as they may deem proper. Should the German-American Savings Bank of the City of Washington increase its capital stock for the purpose of purchasing said property, then the said party of the first part is to have the privilege of subscribing for the same to the amount of twenty thousand dollars, upon the same terms as other subscribers.

"In testimony whereof the said parties of the first and second parts have hereunto set their hands an affixed their seals on the day and year first hereinbefore written.

"(Signed) "Z. C. ROBBINS.
"JOHN HITZ.
"WM. F. MATTINGLY.
"C. E. PRENTISS."

If we analyze this document we find that, like the first agreement, it treats of the entire property, freehold as well as leasehold, and, instead of providing for an absolute sale, transfers the leases of the leasehold, with privilege of purchase, and leases the fee-simple part, with like privilege of purchase, the consideration, as before, being the same amount, $170,000, namely, $93,900 for the lot held by Robbins in fee simple, $35,000 to be paid to clear off the mortgages, and $42,000 to be paid to the owners of the four leasehold lots.

Looking at the agreement in parts we find:

First. Robbins, for and in consideration of the rents, covenants, and agreements to be paid and performed by the parties of the second part, assigns to them the leases of the four leasehold lots, with all the rights and privileges conferred thereby; and leases to them the lot held by him in fee simple for the term of ten years, at a rent of $600 per month.

Second. The parties of the second part, on their side, covenant and agree to pay the said monthly rent above stipulated, and the incumbrances of record against the said property, or any portion thereof, specifying the two deeds of trust for $10,000 and $25,000; and further agree that they will exercise the several privileges of purchasing in fee simple the leasehold lots, by paying the several amounts provided in the leases, namely [amounting in the aggregate to $42,000]; and further, to pay all taxes and assessments to be levied on the property or any portion thereof.

Suppose the paper had ended here, could there have been a doubt that the payments to be made by the parties of the second part, namely, the reserved rent, the $35,000 for clearing off the mortgages, and the $42,000 for buying in the fee (for themselves) of the leasehold property, constituted the consideration of the lease and assignment made to them by Robbins in the first clause? The parties evidently regarded the privilege of purchasing the four leased lots on F street for $42,000 as a valuable one. It does not seem at all improbable that Robbins should demand, and that the parties of the second part should be willing to give, $35,000 (the amount of his mortgages) for this privilege. This would make the four lots cost them $77,000. If Robbins's 4,000 square feet on Seventh street were worth $93,000, it is not unreasonable to suppose the 8,900 square feet fronting on F

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street, and lying in the rear of the other, and almost necessary to it, should be worth $77,000. The remaining parts of the agreement are not in conflict with the construction suggested. In the next place—

Third. Robbins gives to the parties of the second part the privilege of purchasing his fee-simple lot at any time during the ten years' lease for the sum of $93,000.

Fourth. The agreement then provides that Robbins shall pay all interest, rents, taxes, and assessments up to the 1st of November, 1873; and it was further agreed that if the second party should have to pay any sums of money which Robbins, under the agreement, ought to pay, they should be a lien on the property.

Fifth. It was provided that if any of the buildings should fall in repairing, &c., the second party should be released from the contract and refunded the amounts paid by them.

Sixth. It was agreed that if the second party should not exercise their option of buying Robbins's fee-simple property he should for one year after the expiration of the ten years' term have the privilege of buying them out by refunding all payments they might have made.

Now, none of these provisional exigencies took place. The parties of the second part did not exercise their option of buying Robbins's fee-simple property; nor did he exercise his option of buying them out; and the buildings never fell. In all other respects both parties performed their respective parts of the agreement; Robbins paid all interest, taxes, rents, &c., up to November 1, 1873, and paid off the $10,500 judgment lien on the leasehold property; and the parties of the second part and their successors in interest, the German-American Savings Bank and the German-American National Bank, paid the rent of $600 per month, paid off the two mortgages or deeds of trust, amounting together to $35,000, and all interest thereon, paid the rents of the leasehold lots, and bought in the fee simple thereof from the owners at the stipulated amount of $42,000. So that at the close of the transaction the parties stood as follows: Robbins owned his old fee-simple lot on the corner of Seventh and F streets, and the complainant, who purchased the interest of the other parties, owned the four lots on F street.

This is the whole case; and we can hardly entertain a doubt respecting the rights of the parties. We think that the court below was in error in sustaining and allowing against Robbins the complainant's claim for the payment of the two mortgages or deeds of trust and subrogating him to the rights of the mortgagees, Low and the Mutual Benefit Life Insurance Company. The deed of subrogation from the latter company to the German-American Savings Bank was entirely wrong and unauthorized and should be vacated and declared void. Had a cross-bill been filed for that purpose it should have been so decreed. Remedy can be had by an original bill.

The contract contains no stipulation whatever that the parties of the second part were in any event to have a return of the $35,000 paid in lifting the two mortgages, except in the event of Robbins availing himself of his option to have a conveyance of the whole property—an event which never took place. We cannot interpolate such a stipulation. It is not implied by anything that appears on the face of the contract; nor does anything in the surrounding circumstances authorize or require a construction of the contract that would import such a stipulation into it. The first agreement made with Hitz seems to us to have an entirely opposite effect.

On all the other points raised in the case we think that the views of the court below were correct.

The decision is reversed and the cause remanded with directions to dismiss the bill of complaint with costs.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE UNITED STATES
v.
MILLARD H. CRAWFORD.

NOS. 16792 and 16793. CRIMINAL DOCKET 16.

Decided March 12, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. Where there are particular provisions of a statute indicative of the object and purpose which the Legislature had in enacting it, the use of general language in some of the sections which, if it stood alone, might refer to other objects or have a wider scope than such particular provisions will admit of, will not have such effect if the general language is consistent with and supports the evident purpose of the Legislature in providing against the particular evil, but will be held to apply to that alone.
2. The court may look to the history of the legislation and to the history of the execution of a law which has remained upon the statute-books for a considerable time for the purpose of gathering light as to the proper construction of the same.
3. Where an act of Congress is limited to certain localities an act amendatory thereof can have no wider scope than the original act unless expressly so provided in the amendment.
4. The act of Congress of 1862 (relating to the offenses of bigamy and fornication), with its amendments, is not in force in the District of Columbia.

Motions to quash two informations upon which convictions were had in the Police Court and appeals taken to the Criminal Court, and from there certified to the General Term for hearing in the first instance. Granted.

The facts are sufficiently stated in the opinion.

JEFF. CHANDLER and MAURICE SMITH for the motion.

JOHN BLAIR HOGE for the United States.

Mr. Chief Justice BINGHAM delivered the opinion of the court.

In the cases of the United States against Millard H. Crawford, certified from the Criminal Court to be heard here in the first instance, it appears that two prosecutions were commenced against the defendant in the Police Court, informations having been filed charging the defendant with fornication. A conviction ensued in the Police Court and an appeal was taken to the Criminal Court. In the Criminal

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Court the defendant's counsel moved to dismiss the prosecution upon the ground that the information charged the defendant with a violation of no law, ordinance, or act of Congress enforceable in the District of Columbia; also that the informations were insufficient, imperfect, and uncertain, and do not charge the commission of any offense in this District.

This motion, it appears, was understood to be applicable to the two cases against the defendant, but was only filed in one. In the other case a motion was made to quash the information upon substantially the same ground as the motion to dismiss before mentioned. It seems to have been agreed that this motion should apply to both cases.

The position of the defendant filing these motions is, substantially, that the act of 1862 by Congress relates to the Territories of the United States, and especially to the Territory of Utah, and that the provisions of the act of 1882 amendatory of the act of 1862, and the act of 1887, amendatory of the act of 1882, as well as of the act of 1862, have no application whatever to the District of Columbia, and were not so intended by Congress.

The act of 1862, by its first section, provides as follows:

"That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding $500, and by imprisonment for a term not exceeding five years: *Provided, nevertheless*, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living, nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract."

Section 2 relates by express terms to the government of the State of Deseret, so called, and an ordinance incorporating the Church of Jesus Christ of Latter Day Saints, and an act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory. The third section relates to the Mormon Church without naming it.

The act of 1882 re-enacts the first section of the act of 1862, with an amendment to punish and prevent polygamy as well as bigamy. The third section of the act of 1882 provides that if any male person in a Territory or other place over which the United States have exclusive jurisdiction hereafter cohabits with more than one woman he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300, or by imprisonment for not more than six months, or by both such punishments, in the discretion of the court.

The remainder of this act relates almost entirely—there are nine sections in it—to matters which, by express terms, are confined to the Territories of the United States, except section 6, which, we think, by fair intendment, applies only to polygamous offenses.

The act of March 3, 1887, which is entitled "An act to amend an act entitled 'An act to amend section 5252 of the Revised Statutes of the United States in reference to bigamy, and for other purposes, approved March 22, 1882,'" provides by its first section for the proceedings and the conduct of proceedings in any prosecution for polygamy or bigamy or unlawful cohabitation under the act of 1882, and that the husband or wife may testify in prosecutions under that act.

The second section provides for the attachment of witnesses in such prosecutions.

The third section is simply a general provision for the punishment of the crime of adultery, and providing if an act of adultery be committed between a married woman and a man who is unmarried both parties to such act shall be guilty of adultery; and when such act is committed between a married man and a woman who is unmarried the man shall be deemed guilty of adultery.

The fourth section is a provision for the punishment of the crime of incest, and enacts that all persons cohabiting who are within the fourth degree of consanguinity according to the rules of the civil law shall be within the statute.

There are twenty-nine sections in this act of 1887, and, excepting the sections to which allusion has been made, all clearly relate to the Territory of Utah or the Territories of the United States.

It is claimed by the counsel for the United States that the parts of the several acts before recited relate to the District of Columbia and apply here because the language is: "In a Territory of the United States, or other place over which the United States have exclusive jurisdiction." And that, inasmuch as the United States have exclusive jurisdiction over the District of Columbia, necessarily this act applies; that by virtue of the provisions of the declaratory section in the act providing for a Territorial government in the District of Columbia in 1871, to the effect that all laws of the United States not locally inapplicable shall have force and effect in the District of Columbia, that the several sections in the original and amendatory acts not in terms limited to the Territories are applicable to and have force and effect in this District.

It is claimed that there is no reason why these sections of law defining bigamy, adultery, and fornication should not have application in the District of Columbia, not being locally inapplicable.

On the other hand, it is claimed by the defendant that the language used in this statute is entirely different from that used by Congress in any instance where it is intended that the act shall have force and effect in this District; that the language used here is such as is ordinarily used by Congress when the intention is that the act shall apply to places over which the United States have exclusive jurisdiction other than the District of Columbia or the Territories of the United States, to wit, to the places held by the United States for forts, docks, and arsenals.

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It is said, too, that such a construction accords well with the language used in the Constitution of the United States, which gives to Congress exclusive jurisdiction over a Territory not exceeding ten miles square, granted to the United States by any State for the purposes of the seat of Government, and *all other places* acquired by the United States for the purposes of forts, arsenals, docks, &c., the term "other places" in this statute and other like statutes being restricted in application as in the Constitution, and that this language is properly to be construed in these statutes as meaning nothing more nor less than the "other places" specified in the Constitution.

Is is claimed, and, from our examination, we think it is true, that the history of legislation by Congress in reference to this District shows that where Congress intended to legislate for the District of Columbia the habit has been to do so in express terms.

But we are met here with another rule of construction, and that is that the statute is to be construed with reference to the intent of the legislative power; and to arrive at that we first undertake to ascertain the mischief which the Legislature had in view and which they desired to correct. It is clear, we think, from an examination of these statutes, that the purpose of Congress in the enactment of the original statute and of the acts amendatory thereof was to destroy the practice of polygamy in the Territory of Utah, chiefly intrenched there, but, perhaps, to some extent, existing in the adjoining Territories.

It is another rule of construction that where there are particular provisions of a statute indicative of the object and purpose which the Legislature had in enacting it, the use of general language in some of the sections which, if that language stood alone, might refer to other objects or have a wider scope than such particular provisions will admit of, will not have that effect if the general language is consistent with and supports the evident purpose of the legislative power in providing against the particular evil, but will be held to apply to that alone and not to have a more general application.

We are of the opinion that the purpose of Congress in passing these laws was to abolish polygamy in the Territories, and was not to provide for punishing the crime of bigamy and cognate misdemeanors in the District of Columbia. The crime of bigamy was already provided for in the District of Columbia at that time. There is no reference to the fact of the existence of a statute or a law in the District of Columbia punishing bigamy in the act of 1862.

We may look to the history of the legislation and the history of the execution of a law which has been enacted and remained upon the statute-books for a considerable time for the purpose of gathering light as to the proper construction of the same. This law was passed originally in 1862, and, if we are correctly informed, it has never been supposed until very recently that it had any application to the District of Columbia. For a period of twenty-six years it has stood without any prosecutions having been attempted until these were commenced.

Again, if the original act in the first section, providing for bigamy, did not apply to the District of Columbia, then it follows by a well-known rule of construction that the acts amendatory of the same can have no wider scope than the original act unless expressly so provided in the amendment. The amendatory acts relate to the same evil and are part and parcel of the same plan to reach this social vice which existed in a particular portion of the country, and do not, either by the subject-matter embraced therein nor by the language employed in their enactment, justify the legal presumption that Congress had any intention to extend the enforcement of the same to places and jurisdictions not embraced in the statute of 1862.

We are, therefore, of the opinion that the statute of 1862, with its amendments, is not in force in the District of Columbia, and that the motion to quash the informations must be sustained.

MARYLAND COURT OF APPEALS.

WALSH v. McINTIRE.

Decided March 14, 1888.

1. A party cannot acquire title which is maintainable at law by parol gift, followed by actual possession. No interest in land can be acquired, at law, in any other way than by deed. Occupancy under a parol gift is not possession under color of title.
2. When a person is put in charge of property as an agent all his acts of possession afterward are to be referred to the permission under which the original entry was made, there being nothing to establish a disseizin.
3. The non-payment of rent is of itself not sufficient to indicate claim of title.
4. A judgment by default in an ejectment case is as conclusive as a judgment upon verdict. Upon *scire facias* upon such judgment the question decided in the judgment cannot again arise.
5. A judgment in ejectment under the old practice was conclusive upon nobody.
6. Where there is no controversy over lines and the proper location of land it may be doubtful whether a defense on warrant is proper.
7. Although a parol gift followed by possession will not give a legal title, equity in some cases will enforce specific performance where the donor agreed to give and induced possession and large expenses were incurred as if the property had actually been conveyed.
8. *Ex parte* affidavits used in a previous case against the same defendant, not taken under order of court or after notice to the other side, so that the right of cross-examination might have been exercised, are not admissible in evidence.

Appeal from the Circuit Court for Allegany County.

IRVING, J.—This is an action of ejectment, brought by the appellants against the appellee, for a lot of ground containing about three acres. The appellee took defense on warrant, and surveys were made; but no question of location seems to have arisen. The appellants claim under mesne conveyances from the heirs at law of David Shriver, who died in 1853, leaving certain heirs at law, all of whom resided out of the State. The defendant claims by parol gift from David Shriver, the intestate ancestor of the plaintiff's grantors, alleged to have been made in 1851, followed by possession continuously by her, which possession, as against these appel-

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lants, is now set up as adverse and as an effectual bar to this suit, as it is alleged to have continued for a period exceeding twenty years. As both parties claim under David Shriver, the Circuit Court properly ruled that neither could deny David Shriver's title; and no exception was taken to that instruction. The Circuit Court was asked to instruct the jury that "the defendant has given no proof legally sufficient to prove title in her, by adverse possession or otherwise;" but this instruction the court refused to give, and the controlling question in the case is whether this ruling was correct, and whether the instruction the court did give touching that matter was justifiable. The court framed and gave two instructions, as follows:

"1. If the jury find, from the evidence in this case, that the defendant was placed in possession of the lands in controversy in this case by David Shriver, at a time when he was owner thereof, with the understanding between them that the defendant was to hold, use, and occupy them as a home, and as the owner thereof, and that the defendant entered into possession thereof with that understanding and intent, and has occupied the premises continuously from the time of such entry for twenty years or more before the institution of this suit, then the plaintiff cannot recover.

"2. But if, on the other hand, the jury find, from the evidence, that the defendant was placed in possession of the said premises by the said David Shriver only to take care of them, or to occupy them for the benefit of said Shriver, or only to hold the same as a home until such time as he (the said Shriver) should withdraw such permission, or for any other purpose than to have, use, and occupy them as her own, then the plaintiffs are entitled to recover, provided the jury further find that the said premises are within the lines of the plaintiff's deeds from and through David Shriver, read in evidence, and that said deeds are properly located on the plats."

To the granting of the first of these instructions by the court the appellants specially excepted, because the court left to the jury to find whether David Shriver made a verbal gift of the premises to the defendant, which was claimed to be a question of law; and, secondly, because there was no evidence legally sufficient to establish a parol gift or to show a disseizin of David Shriver of the premises in controversy, "and because there was no evidence that there was an understanding with the defendant and David Shriver that she was to occupy the premises as a home and as the owner thereof."

We think the court fell into error in giving the instructions quoted in lieu of the second paragraph of the plaintiffs' prayer, which has also been recited. It is certainly not the law in Maryland that a party can acquire title, which is maintainable at law, by parol gift, followed by actual possession, no matter how long and exclusively continued. It has been repeatedly decided in this State that no interest in land for a period longer than seven years can be acquired, at law, in any other way than by deed duly acknowledged and recorded, as required by the act of 1715, c. 47, and 1766, c. 14, which are embodied in section 1 of article 24 of the Code of Public General Laws. No simple act *in pais* is sufficient to give title. Peter v. Schley's Lessee, 3 Har. & J., 211; Mackall v. Bank, 12 Gill & J., 176; Anderson v. Critcher, 11 Gill & J., 450; Mayhew v. Hardesty, 8 Md., 479; Howard v. Carpenter, 11 Md. 275. Occupancy merely under a parol gift is not possession under color of title which, this court said in Baker v. Lessee of Swan, 32 Md., 358, "is such title as in appearance is good and sufficient, but which in reality is not good and effectual." Here there was no apparent title; there was bare occupancy and nothing more, except the claim in 1869 that David Shriver had given the property to the appellee by parol, and she had entered, under his authority, in pursuance of the gift. The whole evidence in support of the appellee's defense was her own statement as a witness in her own behalf. She says:

"Uncle David Shriver told me to go there and live and take care of the property and not to go away and leave it as Brady had done. William Shriver was afterward surveying on the island and told me not to be frightened. I have lived there since 1852 and built the house that is there now, and have paid taxes since 1870. Mr. Walsh told me he had bought the property when he came there, just before the wharf was built. I told him I was sorry, because David Shriver had given it to me for a home. Mr. Walsh told me he was going to build a wharf and it would be noisy then; I had better select a lot elsewhere; he would give me a home. I told him I did not mind noise. I had been employed by David Shriver eighteen years; swept out the bank; he paid me for my services. He never asked for rent. They dumped earth on the lot when the basin was cleaned out. I consented because they told me it would be a benefit to my garden."

She said she consulted a neighbor and he told her it would benefit the garden, and she accordingly consented to it. She also testified that Mr. Shriver was always kind to her; that when she left Mr. Shriver's she owned and occupied a small lot in the vicinity of the land in controversy here; that she built a dwelling house thereon, and that Mr. Shriver helped her to build the house by giving her some money to do so; that General McKaig claimed the house and lot as his and turned her out of possession; that thereupon Mr. Shriver put her in possession of the property in controversy here. He told her to go and take it and keep it and not to leave it as Brady had done; that Brady had occupied the same property before she entered it and had gone off and left it; that the property was inclosed just as it now is, and that the line of inclosures has never been changed, but remain now as they then were.

She also put in evidence that the land was, when she entered it, low and marshy and liable to overflow from the Potomac River, and was of small value for building purposes. The plaintiff had given evidence of an entry on the land in 1869 and the dumping of the earth and material taken from the basin to a considerable depth over the land, and that the appellee was ordered to remove her crop before doing so, which she did, and that when she was told that Mr. Walsh had bought the same said she was glad; that David Shriver had put her there and she was taking care of it for him and his heirs.

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It was also in evidence that a former ejectment suit had been brought and the appellee notified; that she appeared and entered into the consent rule of lease entry and ouster; and that afterward her counsel struck out his appearance, and judgment was rendered against the casual ejector in favor of the plaintiffs on the 3d of October, 1870. The record of this suit and judgment was in evidence. No execution having issued on the judgment until the expiration of twelve years from its date, this suit was brought.

Upon this state of facts the court below ruled on the theory that the possession of the defendant was under color of title, and therefore adverse. It was error to suppose that there was any color of title or that the possession was adverse. Adverse possession under color of title, this court says in Baker v. Lessee of Swan, "is made out by the coexistence of two distinct ingredients. The first is such title as will afford color; and, secondly, such possession under it as will be adverse to the right of the true owner. And whether these two essentials exist are in all cases questions of law, to be determined by the court, though the facts upon which they are founded are for the finding of the jury. Hence when the facts exhibiting and the possession under it are shown the court will determine whether color exist and the possession be adverse." The title relied on was a parol gift, and the possession given was not such as to indicate a purpose to give the defendant a fee, and the possession enjoyed was not such as to establish an adverse title. Although a parol gift, followed by possession, will not give a legal title, equity will interfere in some cases, and enforce specific performance, where the proof is clear and satisfactory that the donor did agree to give and did induce possession to be taken, and large expenses to be incurred in improvements, as if the property had actually been conveyed. But in such case the interference is on the ground of equitable consideration in the outlay and to prevent the consummation of a fraud. The case of Hardesty v. Richardson, 44 Md., 617, was one of that character, and in it the whole question of when and to what extent equity will relieve is there fully discussed and the authorities collected and cited. Upon the evidence of this defendant herself a court of equity could not and would not enforce a specific performance by decreeing against David Shriver's heirs that they should convey the fee to Jane McIntire of the premises in controversy. If it would not, it is too clear for argument that a court of law should not allow the same facts to go to a jury as sufficient to warrant a verdict for defendant on the ground that she had acquired a legal title if they found the facts testified to.

In the facts testified to by the appellee we can see no element of adverse possession. By her own confession and testimony she was put in possession by David Shriver to take care of the property, which Brady, who had preceded her in that duty, had abandoned and left. She was charged not to do as he had done. Being put, then, as an agent to have care of the property, all her acts of possession afterward are to be referred to the permission under which the original entry was made. There is nothing in her testimony tending to establish a disseizin or ouster of David Shriver or those claiming under him, which the authorities all say the acts of possession indicative of adverse holding must effect. They must be hostile, open, notorious, and exclusive, and must have been continuous for twenty years. They must be such as unmistakably indicate a claim of the absolute title in fee. Richard v. Williams, 7 Wheat., 59; Dean v. Brown; 23 Md., 11; Kirk v. Smith, 9 Wheat., 241; Campbell v. Shipley, 41 Md., 96. She says she paid no rent, and that after 1870 she paid the taxes. The non-payment of rent is of itself not sufficient to indicate claim of title. This court, in Campbell v. Shipley, most pertinently said: "If no rent was paid and the tenancy was not expressly admitted there was nothing to show the possession was held in hostility to the landlord and those claiming under him. In the absence of this proof nothing is to be presumed in favor of an adverse possession, and more particularly when it commenced rightfully and with the assent of the owner." A decision more directly applicable could not be found. The possession in this case, by defendant's own statement, commenced permissively—"to take care of the property." In doing so she became a tenant at will. There is nothing to indicate any claim of title until the conversation she says she had with Mr. Walsh in 1869, when she says she told him that Mr. Shriver had given it to her for a home. Supposing this to be a claim of the fee as against Walsh, the new owner, instead of only an assertion of claim of a home for life, and then conceding that from 1870 she did pay the taxes, the new departure has not continued for twenty years. Besides, Walsh asserted his claim by ejectment, which she did not defend, after appearing to the suit by counsel, and Walsh obtained judgment for the property and could have executed it by writ of *habere*, but did not. If her possession as against Walsh, after assertion of claim, had continued for twenty years, there would have been some ground for her contention of right to hold adversely. But nothing short of that period will justify the presumption of a deed. From what we have said it is clear that the plaintiff's first prayer ought to have been granted without modification; that the court's own instructions were erroneous.

The granting of the plaintiff's first prayer unmodified makes the second prayer of plaintiff unnecessary, and we need not, therefore, examine it, nor their third and fifth prayers.

In rejecting the fourth prayer of the appellee the Circuit Court, in our opinion, erred. That prayer asked the court to say that the defendant was estopped by the ejectment proceedings in No. 146 Trials, October term, 1870, of the Circuit Court for Allegany County (wherein the defendant was defendant in possession), from denying the right of possession to the parcel of land recovered in that suit "for and during the term of twenty years—the demise laid in the declaration." In that case this defendant was also defendant, and was notified and appeared by counsel, who entered into the consent rule, and afterward struck out his appearance, and judgment by default was rendered against the casual ejector.

In Aslin v. Parkin, 2 Burrows, 668, Lord Mansfield, in announcing the unanimous opinion of all the judges, says of the tenant in possession: "If, after he is duly served, he does not appear, but lets judgment go by default,

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such judgment is carried into execution against him by writ of possession. That there is no distinction between a judgment in ejectment, upon verdict, and a judgment by default. In the first case the right of the plaintiff is tried and determined against the defendant; in the last case it is confessed."

The case in which these decisions were made was an action for mesne profits. And then the court said the "tenant was concluded by the judgment and cannot controvert the title, and consequently cannot controvert the plaintiff's possession." Of course this applies only to the term laid in the declaraton, which in this case has not yet expired. So that lease or no lease could not come in question. Tyler Ej., 392. Upon *scire facias* on such judgment the question decided in the judgment could not again arise. Bradford v. Bradford, 5 Conn., 127. But as to the fee of the title it is not conclusive; for by the structure of the pleadings in the old form of action, under which the case offered in evidence was conducted and judgment rendered, it is impossible to plead former recovery. Tyler Ej., 592, 593; Jackson v. Tuttle, 9 Cow. 233; Mackenzie v. Renshaw, 55 Md., 299. A former verdict and judgment, therefore, is not conclusive as to title. In the last-cited case this court said:

"Any judgment in ejectment under the old practice was conclusive upon nobody."

It follows that while the court erred in rejecting the plaintiff's fourth prayer because it only asked that the defendant be declared estopped by the judgment in the former case from the right of denying the right of possession to the property in controversy, and recovered in the former case, for and during the period of twenty years, which was the demise laid in the declaration, yet the court below was entirely right in granting the defendant's seventh prayer, which told the jury that the verdict and judgment in the former case were not conclusive as to the question of title involved in this case. There a lease of twenty years only was declared for; here the entire title is in question. The second prayer of the defendant being but the converse, in substance, of the plaintiff's first prayer in part, with the addition of simply declaring the burden on the plaintiff to prove his case, there was no error in granting it. Of course it was incumbent on the plaintiff to show that his deeds included this parcel of land, for if it had not been conveyed to him it was immaterial whether the defendant's title was good or bad. He could only recover on the strength of his own title.

This was not a case in which there was really a controversy over lines and the proper location of land, and it may be very doubtful whether it was a proper case for the allowance of defense on warrant. The fifty-third section of article 75 prohibits the issuance of warrant of resurvey in actions of ejectment, unless the court is satisfied there is a dispute as to the location of the land claimed in the action. In this case both parties claimed under David Shriver, and the only question was which had the better place. If the deeds were of such general import as to include all the real estate of David Shriver or of such description as to plainly include this parcel of land of course no warrant of survey was necessary. We do not know, for those deeds are not in the record. Under the defense on warrant the defendant only located her possession by inclosures. The plaintiff located various papers by actual survey in part and by protraction in part, and there was no counter location according to the record. There was evidence, says the record, tending to show the correctness of the plaintiff's location. The record contains none to the contrary. If there was none it was misleading to grant that instruction; but being a granted prayer and no exceptions to it for the want of evidence to support it, we cannot, under our rules, say it was granted in error.

It only remains to consider the question raised in the first bill of exceptions. In the former ejectment suit, after the defendant's attorney had struck out his appearance, a judgment by default had been rendered. This judgment the defendant afterward, by other counsel, moved to have stricken out. This motion was heard on the petition and affidavit of the defendant, the answer and affidavit of the plaintiff, certain affidavits of two other persons made before a justice of the peace. The affiants whose affidavits were filed are now dead, and those affidavits, which are with reference to certain admissions of the defendant, were offered by the plaintiff as evidence in this case, but were not admitted. There was no error in their exclusion. They were used, it is true, upon that motion, so far as appears, without objection; but they were *ex parte* affidavits, and were not taken under order from the court, or, as far as appears, after notice to the other side, so that the right of cross-examination might have been exercised. To make such evidence admissible it is imperatively necessary that the opportunity for cross-examination must have been enjoyed, whether availed of or not. Upon the authorities they would not seem to have been admissible. 1 Tayl. Ev., 435.

Judgment reversed and new trial ordered.—*Maryland Law Journal.*

A LEGAL RELIC.—Mr. E. W. Ellsworth, a grandson of Hon. Oliver Ellsworth, the third Chief Justice of the Supreme Court of the United States, has presented to Hon. Henry W. Blodgett, judge of the United States court here, a ruler cut from a venerable red-cedar tree, which for many years shaded the study of Chief Justice Ellsworth. It is inlaid at one end with a piece of the "Charter Oak" and at the other with a piece of the "Pemberton Grant Oak." On one side it has the inscription "To Hon. H. W. Blodgett from E. W. Ellsworth," and on the other "Charter Oak"—"Oliver Ellsworth Cedar"—"Pemberton Grant Oak." Judge Blodgett has hanging in his chambers a picture of the house, including the study of the Chief Justice and the cedar tree from which the ruler was cut.—*Chicago Legal News.*

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

June 12.

11197. Etta Fegley v. William H. Fegley. For divorce. Com. sol., C. Carrington.

June 14.

11198. Downham & Co. v. Mary O. Hall, administratrix, et

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al. To settle estate. Com. sols., Nichol, Holtzman, and Moffett.

11199. James H. Hervy et al. v. Thomas Walsh. To enforce mechanic's lien. Com. sol., J. N. McGill.

June 15.

11200. Daniel Loughran v. Mary Cunningham et al. Creditor's bill and to sell part lot. Com. sol., M. J. Colbert.

11201. R. S. Sutton v. George Emmurt et al. Judgment creditor's bill. Com. sols., H. H. Blackburn and John Ridout.

11202. Sarah Waters, adm'x, et al. v. Sutton Gross et al. To sell lot. Com. sols., Smyth and Smith.

11203. Mary I. Wright v. John N. Wright et al. To sell lots. Com. sol., A. G. Riddle.

June 16.

11204. Elizabeth M. Houchens et al. v. Lola Miller et al. For partition. Com. sol., L. C. Williamson.

11205. Richmond O. Aulick v. W. Blair. For account. Com. sol., W. Blair.

11206. J. H. Thomas et al. v. Mary McD. Thomas et al. Specific performance. Com. sols., Gordon & Gordon.

11207. William A. Shedd et al. v. William P. Shedd, infant. To sell real estate. Com. sols., Same.

11208. Anna M. Welch v. James W. Welch. For divorce. Com. sol., Thomas C. Taylor.

CIRCUIT COURT.—New Suits at Law.

June 7.

28733. Edward Caverly et al. v. Plymouth Congregational Church of the City of Washington, D. C. Account, $155. Piffs attys, Carusi & Miller.

28734. John G. Pettibone v. Ann Maria Ellis. Account, $300.28. Piffs attys, Same.

28735. Benjamin F. Jackson v. John D. Merritt et al. $1,039.45. Piffs atty, L. Robinson.

28736. Herman A. Seligson v. John H. Waugh. Judgment of Justice Strider.

28737. Benjamin Githens et al. v. William D. Peachy. Note and account. Piffs attys, Cole & Cole.

28738. Lavinia S. Hebb et al. v. The Chesapeake Fire Insurance Co. Policy, $833.33⅓. Piffs attys, Same.

28739. John R. Thomas v. The Washington Casino Co. Account, $7,000.06. Piffs atty, C. Carliale.

28740. Edward B. Bruce, trading as Edward B. Bruce & Co., v. William D. Peachy. Account, $344.92. Piffs atty, William G. Johnson.

June 8.

28741. George W. Utermehle v. J. J. Johnson et al. Note, $500. Piffs atty, L. C. Williamson.

June 9.

28742. Basil B. Barnshaw v. George H. Armstrong. Replevin. Piffs atty, F. T. Browning.

28743. John A. Hardenbergh v. Algernon S. Paddock. Note, $1,000. Piffs atty, James F. Hood.

28744. Robert M. Thompson v. William J. Smith et al. Damages, $25,000. Piffs atty, W. A. Cook.

28745. The National Metropolitan Bank of Washington v. J. Floyd King. Note, $461. Piffs atty, Nath'l Wilson.

June 11.

28746. Charles L. Borgmeyer v. Austin P. Brown. Note, $950. Piffs atty, F. D. McKenney.

28747. Thomas E. Waggaman v. Martin C. Flannery et al. Account, $375. Piffs atty, William F. Mattingly.

28748. Thomas W. Smith v. Emily E. Briggs. Account, $202.34. Piffs atty, S. T. Thomas.

28749. Same v. Irwin S. Barker. Account, $510.63. Piffs atty, Same.

28750. Charles Brill v. John A. Berger. Notes, $500. Piffs attys, Edwards & Barnard.

June 12.

28751. Erastus K. Johnson et al. v. Camil Solari et al. Notes and account, $305. Piffs atty, S. T. Thomas.

28752. Peter Wynne, use of Carusi & Miller, v. Daniel Geisler. Account, $200. Piffs attys, Carusi & Miller.

28753. Marguerite Campbell v. The Washington Beneficial Endowment Association of the District of Columbia. Policy, $4,000. Piffs attys, Charles and William B. King.

28754. Samuel G. Painter et al. v. Joseph Herzog. Account, $566.68. Piffs attys, Birney & Birney.

June 13.

28755. Frank P. Iannarone v. Francisco Scagnelli. Account, $368.65. Piffs atty, Arthur Fergusson.

28756. Thomas D. Singleton et al. v. Edward Devlin. Account, $120. Piffs atty, W. P. Bell.

28757. Isaac A. Sheppard et al. v. James R. Harrover. Note, $265.99. Piffs attys, Birney & Birney.

28758. Anthony Lulley v. John W. Morgan. Note, $383.43. Piffs atty, C. F. Rowe.

June 14.

28759. William H. Tenney et al. v. Nicholas De Boy. Account, $322.17. Piffs atty, F. W. Jones.

28760. Stephen Flanagan v. Barton L. Walker et al. Ejectment. Piffs atty, F. H. Mackey.

28761. Frederic Bergner et al. v. Ernest D. Mayer et al. Account, $1,873.70. Piffs atty, R. R. Perry.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Henry Boegeholz**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of June, 1888.

CHARLOTTE BOEGEHOLZ, Adm'x, 1139 7th st. n. w.

25 No. 3121. Ad. D. 14. Chapin Brown, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lucy L. Hunter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of June, 1888.

MARY ANN McCLAIN, Ex'x,
1799 Pa. ave., Washington.

25 C. A. Brandenburg, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Robert E. Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of June, 1888.

CARLOTTA M. MOORE, Adm'x c. t. a.,
734 5th st. n. w.

25 No. 3073. Ad. D. 14. Wm. F. Mattingly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of June, 1888.

Annie Miller v. **Daniel Miller.** } No. 11048. Eq. Docket 28.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **Daniel Miller**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce "a vinculo matrimonii" upon the ground of willful and uninterrupted desertion for over three years.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

25 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 14th, 1888.

In the case of Anthony Lulley, Administrator of **Emilie Lulley**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

25 No. 2706. Ad. D. 13. A. B. Duvall, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Hiram S. Litchfield**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1888.

JAS. T. PETTY, Ex'r, 638 Virginia ave. s. w.

25 No. 3095. Ad. D. 14. O. T. Thompson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

Perry Matthews et al. v. Emeline Williams et al. } Eq. No. 10664.

Julius Maedel, the Trustee appointed by the decree of court in this cause to sell the property involved therein, being the south 100 feet of lot 43 of S. S. Loomis' recorded subdivision of lots in square 69, in the city of Washington, D. C., having reported that he has sold the said property to Thomas M. Brent, at private sale, for the sum of eleven hundred and twenty dollars and twenty cents ($1,120.20), and subject to all taxes and the claim of Wm. L. Bramhall's interest in said property, and that the purchaser has complied with the terms of sale, it is, this 14th day of June, A. D. 1888, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

A true copy. Test: R. J. MEIGS, Clerk.

25 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Myers**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

CALDERON CARLISLE, Ex'r, Fendall Building.

25 No. 3090. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Emma C. Wright**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1888.

C. W. HOLCOMB, Ex'r,
629 F st. n. w., Washington, D. C.

25 No. 3125. Ad. D. 14. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 19th, 1888.

In the case of Randall Hagner, Administrator c. t. a. of **Robert P. Dodge**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 13th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

25 No. 2748. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Lucretia Myers et al. v. John J. Lindsley et al. } Equity 10999.

It is, this 12th day of June, A. D. 1888, ordered that the sales made and reported by George E. Hamilton and J. Holdsworth Gordon, Trustees in above cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 12th day of July, A. D. 1888.

Provided a copy of this order be in inserted in the Washington Law Reporter once a week for three weeks before said day.

The report states the amount of sales to be $66,790.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

25 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Eliza S. Ray**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 24th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of May, 1888.

EDWARD F. QUALTROUGH,
ROSS LESLIE RAY, 1901 F st. n. w.,
Executors.

24 John Selden, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Lippert**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1888.

MAGDALENA LIPPERT, Ex'x,
Alley between G and H and 6th and 7th sts. n. e.

24 No. 3066. Ad. D. 14. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of June, 1888.

William H. H. Gorham v. Henry H. Dudley, jr., et al. } No. 11079. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, **Henry H. Dudley, jr.**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee to release sublot 54, sq. 361, in the city of Washington, D. C., from a deed of trust, recorded in liber No. 850, fol. 415, to Henry A. Duncanson and Henry H. Dudley, trustees, both deceased, on ground that the indebtedness secured has been paid.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

J. Stanley Brown et al. v. Harriet Abbot. } No. 11136. Eq. Docket No. 28.

On motion of the plaintiffs, by Mr. J. H. Ralston, their solicitor, it is ordered that the defendant, **Harriet Abbot**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare deed to Harriet Abbot, recorded in liber 1253, folio 303, &c., of the land records of the District of Columbia, a cloud upon title to so much of lot 29, S. P. Brown's subdivision of Mt. Pleasant as is claimed by plaintiffs herein and specifically described in bill of complainant herein, and for injunction, &c.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Johnson
v. } No. 10917. Eq. Doc. 27.
Julia Johnson.

The Trustee, Tallmadge A. Lambert, appointed in this cause, having reported the sale of the following property, to wit, lot lettered "A" of D. A. Gardiner's subdivision of certain lots in square numbered 214, in the city of Washington, in said District, containing about 2,004½ square feet, to James T. Bradford, at and for the sum of one dollar and fifty cents per square foot, it is therefore, this 26th day of May, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named date.

The sale aggregates $3,006.75.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
22 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Albert W. Bagnam et al.
v. } Eq. No. 10883.
Peter L. Bagnam et al.

It appearing to the Court that no objection has been made to the order nisi passed herein on the 3d day of May, A. D. 1888, but that publication has not been made as provided by said order, it is further ordered, this 6th day of June, 1888, that the sale reported by the Trustee be ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said 21st day of June, A. D. 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
23 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edward Parker, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of June, 1888.

CARRIE V. PARKER, 471 H st. s. w.,
C. C. MEADOR, 903 13th st. n. w.,
Fitnam & Scaggs, Proctors. Administrators.
24 No. 3116. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of William T. Ware, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of May, 1888.

HUMPHREY H. WARE, Adm'r, 609 B st. s. e.
Irving Williamson and Campbell Carrington, Proctors.
24 No. 3080. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Margaret Walker et al.
v. } No. 11,084. Eq. Docket 28.
Lillie M. Walker et al.

The Trustee, William W. Boarman, appointed in this cause, having reported the sale of sub-lot 23 (of the subdivision of W. T. Walker et al.), in square two hundred and ninety-seven (297), to James W. Yates, for the sum of $2,680 cash, it is thereupon, this 29th day of May, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-named day. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
23 By H. W. HODGES, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Obedience McKenney, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

C. C. McKENNEY, Adm'r, 321 G st. s. e.
24 No. 3111. Ad. D. 14. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

William Birney
v. } No. 10977. Equity.
Uriah H. Painter et al.

On consideration of the report of the trustees for sale in this cause, it is, this 28th day of May, 1888, ordered that the sale of lot 20, square 633, to Ida U. Marshall, at the price of $1.92½ per square foot, be confirmed, unless cause to the contrary be shown on or before the 29th day of June, 1888; and it is further ordered that the offer of said Ida U. Marshall to purchase at the price of $1.92½ per square foot lot 19 and the west five feet front on B street of lot 18 in place of lot 22, bid for by her at the auction sale held by said trustees, be accepted by said trustees, and such sale will be confirmed, unless cause to the contrary be shown on or before said 29th day of June next.

Provided a copy of this order be published in the Washington Law Reporter once a week for three weeks before said day.

W. S. COX, Justice.

A true copy. Test: R. J. MEIGS, Clerk.
22 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

Mary Berry
v. } No. 11151. Eq. Docket 28.
Franklin Berry.

On motion of the plaintiff, by Mr. B. F. Leighton, her solicitor, it is ordered that the defendant, Franklin Berry, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant on the grounds of cruelty and desertion.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.
24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mabel Howell et al.
v. } In Equity. 10717.
Samuel G. Muir.

It is, by the Court, this 12th day of June, A. D. 1888, ordered that the offer to purchase the real estate in said case mentioned, made by Alfred Richards, and reported by L. Cabell Williamson, Trustee, be, and the same is hereby, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of July, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 13th day of July, A. D. 1888.

The report states the amount offered to be $2,600.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.
24 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 8th, 1888.

In the matter of the estate of Jackson Lackey.

Application for Letters of Administration on the estate of the said deceased has this day been made by John W. Major and others, who pray that such letters may be granted to James S. Edwards.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
24 Edwards & Barnard, Proctors.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Edward P. Davis et al. v. James S. Davis et al. } Eq. No. 10257.

Consolidated.

James S. Davis et al. v. Edward P. Davis et al. } Equity No. 10576.

George E. Hamilton, Trustee, having reported that he has sold the property mentioned in these proceedings, to wit, sub-lot lettered "L," in square numbered four hundred and sixty (460), to Samuel F. Merrill, for thirty-seven thousand dollars ($37,000), it is ordered, this 26th day of May, A. D. 1888, that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 26th day of June, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
22 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth Lowe**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 17th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 17th day of May, 1888.

SUSAN B. LATIMER,
ANNIE J. ADAMS,
Executrices.

22 No. 3076. Ad. D. 14. Mason N. Richardson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 1st, 1888.

In the case of Hatteraly W. Talbott, Executor of **Joseph H. Bradley**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 22d day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
23 No. 2705. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of Washington, D. C., hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ezekiel B. Elliott**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

23 LUCRETIA ANN ELLIOTT, 1210 G st. n. w.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary Ann Johnson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of March next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of March, 1888.

CAROLINE JOHNSON, Ex'r,
1619 L st. n. w., Washington, D. C.

23. No. 2919. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

John George Henry et al. v. Sophia Bouvet et al. } Equity No. 11037.

Julius A. Maedel, the Trustee appointed by the decree of Court in this cause to sell the property involved therein, being part of lot number eight (8) in square 481, beginning for the same on the line of Sixth street west at the distance of forty (40) feet south from the northwest corner of said lot and running thence south twenty (20) feet, thence due east 93 feet and 4½ inches, thence north 20 feet, and thence west 93 feet and 4½ inches to the place of beginning; also parts of lots 21 and 22, in Richardson's subdivision of lots in the square numbered and described as square west of square 553, beginning for the same at a point in the west line of Third street west forty-two (42) feet south from the northeast corner of lot numbered 19 in said subdivision, and running thence south with the west line of said street 16.97 feet, thence west 53.73 feet to an alley, thence northwesterly with the east line of said alley 16.97 feet, and thence easterly 54.97 feet to the place of beginning, in the city of Washington, District of Columbia—having reported that he has sold the said property, pursuant to notice, at public auction, the aforesaid part of lot 8 in square 481, to Mrs. Auguste Reiter, for the sum of thirty-three hundred and fifty dollars ($3,350.00), and the aforesaid parts of lots 21 and 22 in square west of square 553 to Joshua B. Devan, for the sum of twelve hundred and thirty dollars ($1,230), and that the purchasers have complied with the terms of sale, it is, this 26th day of May, A. D. 1888, ordered, adjudged, and decreed that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of June, A. D. 1888.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said 26th day of June, A. D. 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk, &c.
22 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 2d, 1888.

In the case of Henry J. Gross, Administrator of **Frances Frantzkee**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 22d day of June, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
23 No. 2738. Ad. D. 13. Jesse H. Wilson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Thomas Hampson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1888.

MARTHA R. HAMPSON, Adm'x,
U. S. Geological Survey.

23 No. 3102. Ad. D. 14. S. R. Bond, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Samuel H. Giesy**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1888.

24 CALDERON CARLISLE, Adm'r c. t. a.

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ATTORNEYS-AT-LAW.

WASHINGTON, D. C.

ABERT, WILLIAM STONE, 408 Fifth st. n. w.

BELL, W. PEIRCE, *Counsel in Patent Causes* 625 F St. n. w.

BLAIR, JOHN S., 1420 F St. n. w.

DUMONT, N., 629 F St. n. w.

EDWARDS & BARNARD, 500 5th St. n. w.

MACKEY, FRANKLIN H., 505 D St. n. w.

SAVILLE, JAMES H., 1419 F St. n. w.

CALIFORNIA.

McCALLISTER, WARD, JR., 430 Montgomery St., San Francisco.

COLORADO.

DUNN, GEORGE, Denver.

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WM. STONE ABERT, - - - - - Editor

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WASHINGTON, D. C. - - - - - JUNE 27, 1888

THE *Century* magazine for June contains an editorial urging reform in legislative methods. In it the results of modern legislative work are unqualifiedly condemned. It says that "our laws are badly drawn, that our legislative work is usually slip-shod and defective, that our statute-books are full of contradictions, because new laws are passed without reference to old, and that many of our laws are merely disguised schemes for public plunder." And it might have added that modifications of, and additions to, the law, made imperative by the growth of the people and the increasing complexity of modern affairs, are continuously slighted. These evil results are attributed principally to "our present legislative system, which puts the delicate business of law-making in the hands of men who, as a rule, are wholly unfitted for it."

This may be true in a degree of the men who compose State legislatures. The reason is that the States do not pay their legislators sufficient to induce proficient and experienced men to abandon their profession and hazard the chances of an election. It is hardly the cause of bad Federal legislation. Owing to the wide reputation and possible distinction an able man may obtain through service in Congress it draws into its two Houses many of the best equipped lawyers in the country, and the heads of committees, who are principally concerned in the supervision of the detail work of legislation, are usually experienced public servants.

The great trouble is in our party system of government. Whatever its advantages, they are clearly at the expense of carefully considered legislation. Our Congressmen, with few exceptions, are politicians before they are legislators, and treat with apathetic indifference the details and drudgery of all legislation, and with entire indifference all parts of it that do not appeal to them as politicians. The committee-rooms and the floors of the House and Senate constantly present scenes of ambitious personal strife and fierce partisan contention, while, as a rule, the text of statutes is unexamined and unread by the disputants.

The mixed state of the law in the District is a subject of common and continuous complaint. It is actually in such a confused state that a grave argument was made in a late case as to whether the period of adverse possession of real property necessary to give title is fifteen or twenty years.

It has been proposed as a remedy that some system should be devised by which bills would undergo, before being presented to committees of Congress, rigid expert scrutiny, but this is only a step toward the solution of the problem. There should also be some rule to require the presentation of bills to Congress after they are thoroughly scrutinized, so that they may not die in the pigeon-holes of committees. We do not doubt but that most of the defects complained of may be cured if the bar associations throughout the country will more actively consider proposed legislation and make recommendations in regard thereto. This is the prime necessity for such associations, and lawyers can hardly complain if, when they have the opportunity to unitedly offer and urge good laws in substance and form, they do not do so.

SUPREME COURT OF THE UNITED STATES.

PREPARED E. S. MCCALMONT.

THE TRAVELLERS' INSURANCE COMPANY v. SADIE P. McCONKEY.

Decided May 14, 1888.

A policy of insurance provided that no claims should be made under it if the death of the insured occurred by suicide (felonious or otherwise, sane or insane) or by intentional injuries inflicted by the insured or any other person, or unless the claimant under the policy should establish by direct and positive proof that the death of the insured was caused by external violence or accidental means. In the trial of an action upon the policy the jury were instructed: 1. That external violence was shown when it appeared that the death of the insured ensued from a pistol-shot through his heart. 2. That the legal presumption is against suicide which can only be overcome by proof. 3. That they should not presume from the mere fact of death that the insured was murdered. 4. That if they found from the evidence that the insured was in fact murdered the death was an accident, and if the injuries of the insured which resulted in death were not intentional on his part the plaintiff had a right to recover. *Held*, that the first three instructions were correct, but the fourth erroneous as contrary to the terms of the policy.

In error to the Circuit Court of the United States for the Northern District of Iowa.

Mr. Justice HARLAN delivered the opinion of the court.

This is a suit upon what is commonly called an accident policy of insurance. There was a verdict and judgment against the insurance company for the sum of $5,600 and costs. The case is here upon alleged errors of law committed at the trial to the prejudice of the defendant.

The policy, by its terms, insures the life of George P. McConkey, in the sum of five thou-

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sand dollars, for the term of twelve months, commencing at noon on the 7th of November, 1882; "the said sum insured to be paid to his wife, Sadie P. McConkey, if surviving (in event of her prior death said sum shall be paid to the legal representative of the insured) within ninety days after sufficient proof that the insured, at any time within the continuance of this policy, shall have sustained bodily injuries, effected through external, violent, and accidental means, within the intent and meaning of this contract and the conditions hereunto annexed, and such injuries alone shall have occasioned death within ninety days from the happening thereof; or if the insured shall sustain bodily injuries, by means as aforesaid, which shall, independently of all other causes, immediately and wholly disable and prevent him from the prosecution of any and every kind of business pertaining to the occupation under which he is insured, then, on satisfactory proof of such injuries, he shall be indemnified against loss of time thereby, in a sum not exceeding twenty-five dollars per week, for such period of continuous total disability as shall immediately follow the accident and injuries as aforesaid, not exceeding, however, twenty-six consecutive weeks from the time of the happening of such accident."

The policy also contained these provisions:

"Provided always that this insurance shall not extend to hernia, nor to any bodily injury of which there shall be no external and visible sign, nor to any bodily injury happening directly or indirectly in consequence of disease, nor to any death or disability which may have been caused wholly, in part, or jointly by bodily infirmities or disease existing prior or subsequent to the date of this contract, or by the taking of poison or contact with poisonous substances, or by any surgical operation or medical or mechanical treatment; nor to any case except where the injury is the proximate and sole cause of the disability or death; and no claim shall be made under this policy when the death or injury may have been caused by dueling, fighting, wrestling, lifting, or by overexertion, or by suicide (felonious or otherwise, sane or insane), or by sunstroke, freezing, or intentional injuries inflicted by the insured or any other person, or when the death or injury may have happened in consequence of war, riot, or invasion, or of riding or driving races, or of voluntary exposure to unnecessary danger, hazard, or perilous adventure, or of violating the rules of any company or corporation, or when the death or injury may have happened while the insured was, or in consequence of his having been, under the influence of intoxicating drinks, or while employed in mining, blasting, or wrecking, or in the manufacture, transportation, or use of gunpowder or other explosive substances (unless insured to cover such occupation), or while engaged in or in consequence of any unlawful act; and this insurance shall not be held to extend to disappearances, nor to any case of death or personal injury, unless the claimant under this policy shall establish by direct and positive proof that the said death or personal injury was caused by external violence and accidental means."

The petition setting out the plaintiff's cause of action alleged that the insured, on or about January 2, 1882, "was accidentally shot through the heart by a pistol or gun, loaded with powder and ball, by a person or persons unknown to plaintiff, by reason of which accidental injury said George P. McConkey then and there instantly died, of which accident and death said defendant was duly and legally notified," &c.

The answer denies that the death of the insured was occasioned by bodily injuries effected through external, violent, and accidental means (or effected through external violence and accidental means), within the meaning of the contract of insurance. It alleges: 1, that his death was caused by suicide; 2, that it was caused by intentional injuries inflicted either by the insured or by some other person.

As the argument addressed to this court had special reference to the charge to the jury, the following extract from it is given, as showing the general grounds upon which the court below proceeded:

"The plaintiff exhibits the policy in evidence and gives evidence of the fact that the insured was found dead within the life of the policy from a pistol-shot through the heart. This evidence satisfies the terms of the policy with respect to the fact that the assured came to his death by 'external and violent means,' and the only question is whether the means by which he came to his death were also 'accidental.'

"It is manifest that self-destruction cannot be presumed. So strong is the instinctive love of life in the human breast and so uniform the efforts of men to preserve their existence that suicide cannot be presumed. The plaintiff is therefore entiled to recover unless the defendant has by competent evidence overcome this presumption and satisfied the jury by a preponderance of evidence that the injuries which caused the death of the insured were intentional on his part.

"Neither is murder to be presumed by the jury; crime is never to be presumed; but if the jury find from the evidence that the insured was in fact murdered the death was an accident as to him the same as if he had been killed by the falling of a house or the derailment of a railway car in which he was a passenger. If the jury find that the injuries of the insured, resulting in his death, were not intentional on his part, the plaintiff has a right to recover.

"But if the jury find that the injuries inflicted upon the assured, causing his death, whether by the assured himself or any other person, were intentional on the part of the assured, the plaintiff cannot recover in this action.

"The inquiry, therefore, before the jury is resolved into a question of suicide, because if the insured was murdered, the destruction of his life was not intentional on his part.

"The defendant, in its answer, alleges that the death of the insured was caused by suicide.

"The burden of proving this allegation by a preponderance of evidence rests on the defendant. The presumption is that the death was not voluntary; and the defendant, in order to sustain the issue of suicide on his part, must overcome this presumption and satisfy the jury that the death was voluntary."

The court also said: "In order, therefore, to sustain the plea of suicide the defendant must

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have given to the jury evidence sufficient to overcome the presumption to which I have referred, and to convince the jury that the injury from which the insured died was voluntary or intentional on his part."

As further illustrating the views of the learned judge who presided at the trial, it may also be stated that the defendant asked the court to instruct the jury as follows: "The burden of proof is upon the plaintiff to establish, by a preponderance of credible testimony, that the deceased came to his death from injuries (or an injury) effected through external, violent, and accidental means, within the intent and meaning of the contract and conditions expressed in the policy."

That instruction was given with the following explanation or qualification: "That it does clearly appear, from the evidence, that the insured came to his death from injuries or an injury effected through violent and external means and that the presumption is that the means were unintentional on the part of the insured, which the court holds satisfies the contract. This presumed fact is not conclusive, and may be overcome by evidence, if such there is in the case, that the injuries were voluntary on intentional."

The defendant also asked the following instructions: "Plaintiff must establish by direct and positive proof that the death was caused by external violence and accidental means, and, failing in this, she will not be entitled to a verdict." "Plaintiff's case must not rest upon mere conjecture, but her proof must be such as to lead directly to the conclusion that the death was effected by accidental means within the meaning of the policy, and unless she have adduced proof of that character your verdict should be for the defendant." These instructions were given with the following qualifications: "The external violence appearing in the fact that the death ensued from a pistol-shot through the heart, the presumption is that it was accidental—not intentional—on the part of the assured, which facts, proved and presumed, make out the plaintiff's case, unless the defendant has satisfied the jury by affirmative proof that the means of death were intentional on the part of the insured."

There is no escape from the conclusion that, under the issue presented by the general denial in the answer, it was incumbent upon the plaintiff to show, from all the evidence, that the death of the insured was the result, not only of external and violent but of accidental means. The policy provides that the insurance shall not extend to any case of death or personal injury, unless the claimant under the policy establishes, by direct and positive proof, that such death or personal injury was caused by external violence *and* accidental means. Such being the contract, the court must give effect to its provisions according to the fair meaning of the words used, leaning, however—where the words do not clearly indicate the intention of the parties—to that interpretation which is most favorable to the insured. National Bank v. Ins. Co., 95 U. S., 678; Western Ins. Co. v. Cropper, 32 Pa. St., 355; Reynolds v. Commerce Fire Ins. Co., 47 N. Y., 604; Anderson v. Fitzgerald, 4 H. L. C., 484, 498, 507; Fowkes v. M. & L. Ass., 3 Best & Smith, Q. B., 925.

The requirement, however, of direct and positive proof, as to certain matters, did not make it necessary to establish the fact and attendant circumstances of death by persons who were actually present when the insured received the injuries which caused his death. The two principal facts to be established were external violence and accidental means, producing death. The first was established when it appeared that death ensued from a pistol-shot through the heart of the insured. The evidence on that point was direct and positive, as much so, within the meaning of the policy, as if it had come from one who saw the pistol fired; and the proof, on this point, is none the less direct and positive because supplemented or strengthened by evidence of a circumstantial character.

Were the means by which the insured came to his death also accidental? If he committed suicide, then the law was for the company, because the policy, by its terms, did not extend to or cover self-destruction, whether the insured was at the time sane or insane. In respect to the issue as to suicide the court instructed the jury that self-destruction was not to be presumed. In Mallory v. Travellers' Ins. Co., 47 N. Y., 54, which was a suit upon an accident policy, it appeared that the death was caused either by accidental injury or by the suicidal act of the deceased. "But," the court properly said, "the presumption is against the latter. It is contrary to the general conduct of mankind; it shows gross moral turpitude in a sane person." Did the court err in saying to the jury that, upon the issue as to suicide, the law was for the plaintiff, unless that presumption was overcome by competent evidence? This question must be answered in the negative. The condition that direct and positive proof must be made of death having been caused by external, violent, and accidental means did not deprive the plaintiff, when making such proof, of the benefit of the rules of law established for the guidance of courts and juries in the investigation and determination of facts.

Upon like grounds we sustain the ruling to the effect that the jury should not presume, from the mere fact of death, that the insured was murdered. The facts were all before the jury as to the movements of the insured on the evening of his death, and as to the condition of his body and clothes when he was found dead, at a late hour of the night, upon the floor of his office. While it was not to be presumed, as a matter of law, that the deceased took his own life, or that he was murdered, the jury were at liberty to draw such inferences in respect to the cause of death as, under the settled rules of evidence, the facts and circumstances justified.

We are, however, of opinion that the instructions to the jury were radically wrong in one particular. The policy expressly provides that no claim shall be made under it where the death of the insured was caused by "*intentional* injuries by the insured *or any other person.*" If he was murdered, then his death was caused by intentional injuries inflicted by another person. Nevertheless, the instructions to the jury were so worded as to convey the idea that if the insured was murdered the plaintiff was entitled to recover; in other words, even if death was caused wholly by intentional injuries inflicted upon the insured by another person the means

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used were "accidental" as to him, and therefore the company was liable. This was error.

Upon the whole case the court is of opinion that, by the terms of the contract, the burden of proof was upon the plaintiff, under the limitations we have stated, to show, from all the evidence, that the death of the insured was caused by external violence and accidental means; also, that no valid claim can be made under the policy, if the insured, either intentionally or when insane, inflicted upon himself the injuries which caused his death, or if his death was caused by intentional injuries inflicted upon him by some other person.

The judgment is accordingly reversed and the cause remanded, with directions to grant a new trial and for further proceedings consistent with this opinion.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOSEPH A. REPETTI
v.
CHRISTIAN MAISAK ET AL.

No. 10362.

Decided May 7, 1888.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. In a suit for specific performance of a contract to convey real estate the agreement must be made out fully in writing. Parol evidence cannot be resorted to to supply any of its terms.
2. It is not necessary that the agreement should be all in one paper; but if there be more than one they must be connected by a reference in one to the other. If on their face they do not appear to refer to the same subject-matter parol evidence cannot be resorted to to show that fact.
3. And even when the whole contract is in writing, yet if it be not clear, specific performance will not be enforced.

Appeal from a decree dismissing a bill in equity to compel specific performance of a contract for the sale of real estate. Affirmed.

The facts are stated in the opinion.

JAMES F. HOOD and MILLS DEAN for plaintiff:

It is sufficient if the contract can be plainly made out in all its terms from any writing of the party or even from his correspondence. Ide v. Stanton, 15 Vt., 690; Abeel v. Radcliff, 13 Johns., 298.

Weller & Repetti sign as "agents for owner," and parol testimony is admissible to show their agency. Browne, Stat. Frauds, sec. 364; Dykers v. Townsend, 24 N. Y., 59; Williams v. Bacon, 2 Gray, 391; Sanborn v. Flager, 9 Allen, 477.

In McConnell v. Brillhart, 17 Ill., 361, the court says:

"The writings, note, or memoranda shall contain on their face or by reference to others that are traceable the names of parties, vendor, vendee, a sufficiently clear and explicit description of the thing, interest, or property as will be capable of identification and separation from other of like kind, together with terms and conditions and price to be paid or other consideration to be given."

THOMAS F. MILLER and C. INGLE for defendants:

The authority conferred upon Weller & Repetti did not give them the right to conclude a contract for the sale of the real estate in question or to bind the defendant Maisak to execute a deed. In this respect the case is clearly within Ryon v. McGee, 2 Mackey, 19.

In order to bind the principal and make it his contract the instrument must purport upon its face to be the contract of the principal, and his name must be inserted therein and signed thereto, and not merely the name of the agent, although the latter be described as agent. Story, Agency, 147; Prather v. Ross, 17 Ind., 495.

Mr. Justice COX delivered the opinion of the court:

This was a bill filed to compel the specific performance of an agreement, or an alleged agreement, to convey real estate.

The complainant alleges that the defendant Maisak in writing authorized certain real estate agents, known under the firm name of Weller & Repetti, to sell a part of lots 1 and 2 in square south of square 1036 for him, and that afterward those agents sold the property to the complainant, who is the brother of one of them, on certain terms, and that the defendant Maisak saw an opportunity to make a better bargain and refused to complete the contract. Complainant asks for a specific performance.

The defendant denies that he authorized any sale at all, still less such a sale as the complainant alleges was made to him. It therefore becomes a question of proof, and a contract of this kind can only be proved in the way that the statute requires—*i. e.*, in writing. The question is whether the evidence offered is such as to satisfy the statute.

There are two rules by which a court is guided in a case of this sort, the first one being that an agreement of this kind must be made out fully in writing and it must not be necessary to resort to parol evidence to supply any of its terms. It is not necessary that it should be all in one paper. It may be in different papers, but they must be connected by a reference in one to the other. If on their face they do not appear to refer to the same subject-matter it will not do to resort to parol evidence to show that fact. That must appear on the face of the paper by the reference of one to the other. In this case the paper signed by the complainant, which is relied upon, is in the following language:

"WASHINGTON, D. C., November 26, 1886.

"Messrs. WELLER & REPETTI.

"SIRS: You are hereby authorized to act as my sole agents in the sale or exchange of the following described property on the terms above indicated. (Those terms refer to the agents' commission.)

"Part of lots 1 and 2 in square south of square 1036, at the price of $1,800, net. Incumbrance, $1,100.

"Five frames, renting at $4 per month, about 146.5 on A street, 20 on public space between Sixth and Seventh streets.

"CH. MAISAK."

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The other paper relied upon is the receipt given by the agents to the alleged purchaser:

"WASHINGTON, D. C., December 1, 1886.

"Received of Joseph A. Repetti a deposit of $50 to be applied in part payment of purchase of parts of lots 1 and 2 in square south of 1036, with the improvements thereon. The purchaser is required to make full settlement, in accordance with terms of sale, within fifteen days from this date or deposit will be forfeited.

"Price of property, $1,900. Terms of sale, cash cash, balance —— incumbrance to be assumed by purchaser, secured by deed of trust on the above described property, with interest at the rate of —— per cent. per annum, payable ——. Title to be good or deposit refunded. Taxes to be paid to November 1, 1886. Insurance, ——. Conveyancing at cost of purchaser.

"WELLER & REPETTI,
"Agents for Owners."

In the first place it does not appear that the part of these lots referred to in this receipt is the same part of the lots referred to in the paper given to the agents. *Non constat* but that it may be different. It does not appear that the owner is the same either. That can only be shown by parol evidence. It will have to be shown by parol that the parts of lots sold by Weller & Repetti were the parts they were authorized in writing to sell by the owner. It will have to be shown that the owners referred to in the receipt are the same parties who authorized the sale. The agreement, therefore, is manifestly not complete so far as the writings here are relied upon. Nor is anything gained by a note which the defendant Maisak is said to have written to his attorney:

"Mr. LASSELL:

"SIR: Please come and see me and bring the papers of square south of square 1036, as I have sold it. The money is deposited.

"Yours, &c., CH. MAISAK."

That does not indicate to what lot it refers or what sale of lots these agents were authorized to make. Upon this ground the court held that the statute of frauds is not complied with by these papers and that they do not constitute a sufficient memorandum; and therefore the court would not enforce the sale.

There is still another rule which is influential with courts in regard to this matter, viz., that even if the whole contract is manifested in writing, whatever there is of it, and parol evidence is not relied upon at all, the contract at least must be very clear, or else this particular remedy of specific performance will not be administered.

At the outset is a difficulty which it is impossible for us to clear up in these papers. The bill shows it on its very face. It says: The original letter of the said defendant to the said Weller & Repetti, describing the said premises as parts of lots 1 and 2 in square south of square 1036, &c., and authorizing the said Weller & Repetti to act as his sole agents for the sale of said property at the price of $1,800, net, subject to the incumbrance of $1,100, is attached.

Then it goes on to state that they sold the real estate for the sum of $1,900 cash, "less the amount of said incumbrance," which shows a direct variance between the terms of sale made and the terms authorized. The terms authorized are said to be $1,800, subject to an incumbrance. The sale alleged to have been made is for $1,900 less an incumbrance. And when we come to the papers themselves they exhibit the same obscurity. The authority is to sell parts of lots 1 and 2 at the price of $1,800, net, with an incumbrance of $1,100. I do not know exactly what that means, whether it means net, subject to the incumbrance, or what. It would appear to be so, and is alleged to be so in the very bill itself. But when we turn over to the receipt given for the deposit the price of the property is put at $1,900 and the terms of sale "cash cash" (with a comma) and then "balance —— incumbrance to be assumed by purchaser, secured by deed of trust on the above described property, with interest at the rate of —— per cent. per annum, payable ——."

It is impossible for the court to make out what that means. This is a very good reason for not undertaking to enforce such an agreement.

The judgment of the court below is affirmed.

UNITED STATES CIRCUIT COURT.

DISTRICT OF MASSACHUSETTS.

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SINGER MANUFACTURING COMPANY v. SPRINGFIELD FOUNDRY COMPANY ET AL.

Decided April 2, 1888.

1. Where different parts of a machine are covered by separate patents a purchaser of such machine from the patentee, who replaces one of the parts or elements covered by an individual patent when worn out, is guilty of an infringement.
2. It is within the discretion of the court to decide whether or not a bill in equity is multifarious in its nature, such question depending upon the circumstances of each individual case.

COLT, J.—This suit is brought for the infringement of the sixth claim of letters patent No. 208,838, dated October 8, 1878, all the claims of letters patent No. 229,629, dated July 6, 1880, and the second claim of letters patent No. 274,359, dated March 20, 1883. These several patents were issued to the complainant for improvements in sewing-machines. The bill has been taken *pro confesso* as against the Springfield Foundry Company. The present controversy is between the complainant and the remaining defendant, Duckworth. Duckworth is a machinist, and has made a specialty of repairing sewing-machines. He admits that he makes certain parts of the Singer I M machine to replace worn or broken parts in machines sold by the complainant, and that he has also made and furnished these parts to one John Thornton, jr., of New York, a dealer in sewing-machine supplies, and engaged in the business of repairing sewing-machines. The parts introduced in evidence are the feed-cam, forked connecting feed-bar, feed-lifting rock-shaft, feed rock-shaft, shuttle-driver, and shuttle-race. He contends that the making of these parts does not constitute an infringement, because—first, they are each but one of many other parts constituting an organized sewing-machine; second, that the parts so made by the defendant have been made for the pur-

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pose of replacing parts which have been broken or worn out in organized sewing-machines sold by the plaintiff; third, that neither he nor any other person has assembled the parts so made in one machine, but that each part has been made to replace a corresponding part in some organized machine made and sold by the plaintiff. He admits, however, that the parts could fit no other machine, without considerable alteration, than the Singer I M. The position taken by the defendant is that he has a right to make and sell these parts, provided the article is not made or sold with the intent to put it to an unlawful use; that the use here is lawful, because the purchaser of a patented machine has a right to repair it and to replace parts as often as may be necessary, provided he does not destroy the identity of the machine. The cases relied upon by defendant are Wilson v. Simpson, 9 How., 109; Chaffee v. Belting Co., 22 How., 217; Gottfried v. Brewing Co., 8 Fed. Rep., 322.

In Wilson v. Simpson it was held that an assignee having a right to use Woodworth's planing-machine had a right to replace new cutters or knives for those which were worn out. The court says:

"The right of the assignee to replace the cutter-knives is not because they are of perishable materials, but because the inventor of the machine has so arranged them as a part of its combination that the machine could not be continued in use without a succession of knives at short intervals. Unless they were replaced the invention would have been of but little use to the inventor or others. The other constituent parts of this invention, though liable to be worn out, are not made with reference to any use of them which will require them to be replaced. These, without having a definite duration, are contemplated by the inventor to last so long as the materials of which they are formed can hold together in use in such a combination. No replacement of them at intermediate intervals is meant or is necessary. They may be repaired as the use may require. With such intentions they are put into the structure. So it is understood by the purchaser, and beyond the duration of them a purchaser of the machine has not a longer use for them. But if another constituent part of the combination is meant to be only temporary in the use of the whole, and to be frequently replaced, because it will not last as long as the other parts of the combination, its inventor cannot complain, if he sells the use of his machine, that the purchaser uses it in the way the inventor meant it to be used, and in the only way in which the machine can be used. Such a replacement of temporary parts does not alter the identity of the machine, but preserves it, though there may not be in it every part of its original material."

In Chaffee v. Belting Co., 22 How., 217, the court says:

"When the patented machine rightfully passes to the hands of the purchaser from the patentee, or from any other person by him authorized to convey it, the machine is no longer within the limits of the monopoly. According to the decision of this court in the cases before mentioned, it then passes outside of the monopoly and is no longer under the peculiar protection granted to patented rights. By a valid sale and purchase the patented machine becomes the private, individual property of the purchaser, and is no longer protected by the laws of the United States, but by the laws of the State in which it is situated. Hence it is obvious that if a person legally acquires a title to that which is the subject of letters patent, he may continue to use it until it is worn out, or he may repair it or improve upon it, as he pleases, in the same manner as if dealing with property of any other kind."

In Gottfried v. Brewing Co., 8 Fed. Rep., 322, the patent was for an improvement in pitching the inside of barrels, and Judge Blodgett thus states the rule:

"From the functions of the different parts of this machine it is obvious that some of them will wear out much faster than others, and I think there can be no doubt that the defendant has the right to replace those parts as often as necessary, so long as the identity of the machine is retained. The proof in this case shows to my satisfaction that as the grates, pipes, and blowers were worn out, they were renewed, and therefore the identity of the machine is retained. If, for instance, this patent had been upon a peculiar grate, and there had been no patent upon the other parts of the machine when the grate was worn out, the defendant would have no right to put in another like it, because the grate was covered by the patent; but if the grate is only a part of an entire combination, I think it has a right to replace the worn out parts, and it cannot be said to be a different machine."

In Aiken v. Print Works, 2 Cliff., 435, the purchaser bought a knitting-machine with which the vendor sent a package of needles to be used with the machine. The needles were subject to a separate patent. The court (Mr. Justice Clifford) observes:

"Right to repair is limited by the same rules that operate in the repair of other property. The owner may repair, but he cannot appropriate the materials belonging to another man in effecting the purpose. Purchasers in this case may repair the needles they purchased, but they cannot manufacture new ones without license. Reference is made to the case of Wilson v. Simpson, 9 How., 123, but a careful examination of the case will show that it affirms the very rule here maintained. 'When we speak of the right to restore a part of a deficient combination, we mean,' say the court, 'the part of one entirely original, and not of any other patented thing, which has been introduced into it to aid its intended performance.' The cutters and knives in that case were not subject to a patent, and of course the respondent had a right to use them as materials to repair his machine; but unfortunately for the defendants in this case, the needle is subject to a patent, and in making and using it they have infringed the right of the plaintiff."

As illustrated by these cases the rule seems to be that where a patent covers as an entirety a machine composed of several separate and distinct parts, the purchaser of such machine from the patentee will not infringe by replacing such temporary parts as wear out, so long as the identity of the machine is retained; but if the patent is for a distinct part or element of the machine, a purchaser will infringe by replacing

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such part or element. Tested by this rule, I think the defendants are guilty of infringement in the present case. The sewing-machine of complainant is not patented as an entirety, but different parts of the machine are covered by different patents. Claims 1 and 2 of patent No. 229,629 cover an improved shuttle-driver, and the defendant makes and sells the same device to be used in a Singer machine. The second claim of letters patent No. 274,359 is for a shuttle-race for an oscillating shuttle, provided with an elastic side or flange. The shuttle-race cannot be used in the Singer I M machine without the elastic flange. The defendant makes the shuttle-race for use in such machine. He therefore makes the major part of the patented combination, intending that it should be provided with an elastic flange, and used in complainant's machine. Claims 3 and 4 of patent No. 229,629 and claim 6 of patent 208,838 are combination claims. The main elements found in these patented combinations are made and sold by defendant for use in the Singer machine. Under the authority of Wilson v. Simpson and other cases this cannot be done.

The defense of multifariousness is also relied upon. The defendant Duckworth has answered, proofs have been taken, and a hearing had upon the merits of the bill. I do not see in what respect the defendant suffers any injury by having these causes of action heard together. All the patents sued upon relate to one machine, and the defendant is not prejudiced by this joinder. Whether a bill is multifarious or not must depend upon its own circumstances, and must necessarily be left to the discretion of the court. Oliver v. Pratt, 3 How., 333, 412.

Upon the whole I think a decree should be entered for the complainant; and it is so ordered. Decree for complainant.

SUPREME COURT OF PENNSYLVANIA.

PENNSYLVANIA RAILROAD COMPANY v. RAIORDAN.

Decided April 9, 1888.

1. A common carrier may by special contract limit his liability, except for his negligence.
2. Where a railroad receives a car-load of horses upon a bill of lading which provides that the shipper shall "send a proper person or persons in charge of said stock and assume all risks of damage and injury to, delay, depreciation, and escape of said stock while in transit, releasing said company and other carriers from all claims or demands therefor, except when proved to have occurred through gross negligence," and the shipper accompanies the train, going to the car every time the train stops, and on the arrival of the car at its destination one of the horses is found dead, but the cause of death is not shown, the carrier is not liable.
3. A carrier's negligence will not be presumed, except upon proof of the happening of an injury which the exercise of proper care by the carrier could have prevented.
4. It seems that, in this case, upon proof of the shipment and death of the horse, without proof of the cause of death, the shipper could not recover, even at common law and in the absence of the bill of lading.

Mr. Justice WILLIAMS delivered the opinion of the court:

It is too late to deny that in Pennsylvania a common carrier may limit his liability by special contract. In Atwood v. Reliance Transportation Company, 9 Watts, 87, Gibson, C J., recognized the rule as well established, although expressing grave doubts of its wisdom. In Laing v. Colder, 8 Pa., 479, this court again gave its assent to the rule, while Bell, J., by whom the opinion was delivered, expressed his sympathy with the doubt of Chief Justice Gibson. The same rule has held in many later cases, among which are Powell v. Pa. R. R. Co., 32 Pa., 414; Am. Exp. Co. v. Sands, 55 Pa., 140; Pa. R. R. Co. v. Miller, 87 Pa., 395; Adams Exp. Co. v. Sharpless, 77 Pa., 517; Clyde v. Hubbard, 88 Pa., 358.

It is equally well settled that such limitation does not relieve the carrier from liability for his own negligence. Pa. R. R. Co. v. Miller, *supra*.

The reason for this qualification of the power to limit liability rests on public policy. At common law if property was lost or injured while in the hands of the carrier, the burden of proof was on the carrier to show the existence of such circumstances as were sufficient to excuse him from liability. Such is still the general rule; but when a special contract is entered into between the shipper and the carrier the contract takes the place of the common-law rule and fixes the liability of the carrier.

In the case at bar Raiordan shipped a car-load of horses, eighteen in all, over the railroad of the defendant from Walkersville, Maryland, to Philadelphia.

The bill of lading provided that the shipper should "send a proper person or persons in charge of said stock and assume all risks of damage and injury to, delay, depreciation, and escape of said stock while in transit, releasing said company and other carriers from all claims or demands therefor, except when proved to have occured through gross negligence."

The plaintiff, in accordance with his undertaking to send a proper person in charge of the stock, went himself upon the train with it, and, as he testified on the trial, went to the car in which his horses were every time the train stopped and looked into it, but saw nothing to attract his attention. When the train arrived in Philadelphia one of the horses was found dead in the car, and this action was brought to recover its value from the railroad company.

The plaintiff showed that he shipped the horses, eighteen in number, for Philadelphia, and that on the arrival of the train one of them was dead; but he did not show whether the horse died from disease or fright or injuries received in the course of the transportation; nor was it alleged that any accident happened to the train or the car in which the plaintiff's horses were while on the journey. The defendant, in view of this state of the evidence, offered the bill of lading and rested. The court was then asked to charge the jury "that under the terms of the bill of lading their verdict should be for the defendant." This instruction was refused, and then a binding instruction to find in favor of the plaintiff, for the value of the horse, was given. The learned judge did not place his reasons for this instruction upon the record. As the right of the carrier to limit his liability is well settled in Pennsylvania, we are left to con-

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jecture that the instruction was induced by an opinion that there was a legal presumption of negligence against the defendant that shifted the burden of proof and put upon the carrier the duty of showing that the death of the horse was not due to the negligence of its agents or servants.

The rule in relation to the presumption of negligence against a carrier is well stated in Laing v. Colder, 8 Pa., 479:

"Now, the mere happening of an injurious accident raises, *prima facie*, a presumption of neglect and throws upon the carrier the *onus* of showing that it did not exist."

But the word "accident" must be understood as referring to such happenings as the exercise of proper care by the carrier could have prevented. The machinery for transportation is under his exclusive management and control, and he contracts for its sufficiency and for the skill and fidelity of his servants in charge of it.

If for any reason an injurious accident happens to, or by reason of, that which the carrier provides for the transportation, the law, which imposes the exercise of the utmost care upon him, presumes the accident to be due to the want of that care and puts upon him the duty of successfully relieving himself from that presumption. But when the fact of an "injurious accident" is not shown to exist the presumption which arises from it cannot be invoked by a plaintiff. The contract of the carrier does not insure against death generally, but only as it may be the result of an injurious accident in the course of the carriage. A passenger may die, while in his seat in a car, from disease or from his own act, just as he might die in his own house from the same cause; but we have never heard it alleged that the carrier was liable in damages because of a death so happening, nor that it was his duty to show affirmatively that the death was due to causes over which he had no control.

Death from natural causes can hardly be called an accident; but if it was otherwise, yet there is a very broad distinction between the case of its coming to a passenger as an individual by reason of circumstances and conditions that are personally peculiar to him and the case of its coming to a passenger as such by reason of accident to, or on account of, the means of transportation employed by the carrier, whether in motion or not. In the former class of cases no presumption of negligence can arise, for the facts furnish no foundation for it. In the latter there is a presumption, not conclusive, but *prima facie*, on which the plaintiff may rest and which the carrier must overcome.

Applying this distinction to the case we have in hand, and its disposition is easy. The testimony of the plaintiff showed the happening of no injurious accident to the train or car on which his horses were transported. It showed that he was personally in charge of them and at every stop examining the car, and that he saw nothing to attract his attention. It showed that the death of his horse on the journey was wholly unknown to him until he reached the city, and he does not attempt to assign a cause for it. This testimony left no ground for the legal presumption that arises from the happening of an injurious accident, and left the burden of proof where it rests in ordinary cases—on the plaintiff. When, therefore, it appeared by the terms of the bill of lading that the liability of the carrier was limited to such injuries as were the result of gross negligence on its part, and the plaintiff made no attempt to show the happening of an accident or the negligence of the carrier, the court should have given the binding instruction asked by defendant's counsel. In fact it may well be doubted whether the introduction of the bill of lading was at all necessary. The plaintiff's evidence left him no fact from which the legal presumption could arise, and no proof to take its place from which negligence in fact could properly be found by the jury. This was, therefore, a case in which a compulsory nonsuit would have been proper.

Judgment reversed.

NOTE.—*Limitation of Carrier's Liability.*—The original common-law rule that common carriers were liable for all loses except those occasioned by the act of God or the public enemy had by the commencement of the present century become so far relaxed in England that it was held without question that such carriers might by due notice or special contract relieve themselves from responsibility even for gross negligence (Maving v. Todd, 1 Stark, 72; Leeson v. Holt, Id. 186), and although many cases are to be found where the courts express regret that the relaxation of the ancient rule had gone so far, yet they confess their inability to recede from the new rule without legislative action. Parliament therefore embodied in section 7 of the railway and canal traffic act of 1854 (17 and 18 Vict., c. 31), to be found in 1 Interstate Commerce Reports, 845, a provision that every railway or canal company should be liable for loss of or injury to any animal or goods occasioned by the neglect or default of the company, notwithstanding any notice or condition given or made limiting such liability; but the force of this enactment was much weakened by an accompanying proviso that nothing in the act contained should prevent such companies from making such conditions with respect to animals or goods as should be adjudged by the court or judge before whom any question relating thereto might be tried to be just and reasonable.

The courts of this country have been much stricter than those of England, and with the exception of the States of New York and West Virginia it is believed to be the settled rule that, although a carrier may by contract relieve himself from liability as an insurer, he cannot relieve himself from liability for negligence on the part of himself or his agents.

This rule was established for the Federal courts by the leading case of New York Central Railroad Company v. Lockwood, 84 U. S., 17 Wall., 357 (21 L. ed., 627), where it is held that a common carrier cannot lawfully stipulate for exemption from responsibility when the exemption is not just and reasonable in the eye of the law, and that it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or servants.

The statutes of some of the States have gone even further than the courts in restraining the power of carriers to limit their liability by no-

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tice or contract. For instance, in Iowa it is provided by an act passed in 1866 that in the transportation of persons or property by any company or person no contract, receipt, rule, or regulation shall exempt the carrier "from the full liability of a common carrier, which, in the absence of any contract, receipt, rule, or regulation, would exist with respect to such persons or property." And in Texas, a statute enacted in 1860 is to the effect that carriers within that State may not "limit or restrict their liability, as it exists at common law, by any general or special notice, nor by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, nor in any other manner whatever."

In New York the rule is now settled that a carrier may by contract relieve himself from liability even for negligence, but to have that effect the contract must in terms and expressly exempt the carrier from liability on this account; and hence general terms, such as a release from liability, "from whatsoever cause arising," or for "damage occasioned by delays from any cause," will not relieve the carrier from the results of negligence. Maguire v. Dinsmore, 56 N. Y., 168; Mynard v. Syracuse, &c., R. Co., 71 N. Y., 180; Nicholas v. N. Y. Cent., &c., R. Co., 89 N. Y., 370.

This rule is now observed in New York without question, as, for example, in the recent case of Tanner v. N. Y. Cent., &c., R. Co., 11 Cent. Rep., 82, where a shipper recovered, on proof of negligence on the part of the carrier, for the loss of goods through fire, although the special freight contract under which they were shipped released the carrier from liability for loss by fire, but contained no express release from liability for negligence.

In West Virginia a common carrier may, by contract clearly expressed, relieve himself from all liability except for fraud. Baltimore & O. R. Co. v. Skeels, 3 W. Va., 556.

The following are recent cases on this subject:

A carrier may limit its liability as insurer, but not from its neglect or fraud. Rosenfeld v. Peoria D. & E. R. Co. (Ind.), 1 West. Rep., 151; Carroll v. Missouri Pac. R. Co. (Mo.), 3 West. Rep., 842; Pa. R. Co. v. Wilson (Pa.), 3 Cent. Rep., 915; Grogan v. Adams Express Co. (Pa.), 5 Cent. Rep., 298; Adams Express Co. v. Holmes (Pa.), 8 Cent. Rep., 155.

A carrier may limit its liability to damages arising on its own line. Wabash, St. L. & P. R. Co. v. Jageman (Ill.), 7 West. Rep., 863.

A carrier cannot by contract avoid statutory liability for negligence of connecting carrier. Orr v. Chicago & A. R. Co. (Mo. App.), 4 West. Rep., 260. In Burroughs v. Grand Trunk R. Co. (Mich.), 11 West. Rep., 482, the court was divided as to whether a way-bill lessening common-law liability affected connecting lines.

Where goods are delivered to carrier under agreement not restricting its common-law liability it cannot thereafter insert in bill of lading clauses restrictive of its usual liability. Park v. Preston (N. Y.), 11 Cent. Rep., 280.—*Central Reporter.*

BOTTLES containing ginger-ale are not liable to any duty, under the act of March 3, 1883. Lelar v. Hartranft, U. S. C. C. (Pa.), Oct. 3, 1887.

Notes of Cases.

IN Levison v. Balfour *et al.*, Circuit Court for Northern District of California, decided March 19, 1888, it was held that where a consignee of goods of different qualities is only authorized to sell the whole in one lot, at a limited price per ton, sells a part of average quality at a price above the limit, but does not sell the remainder, he is liable to account to the consignor for the whole at the price limited.

IN Clay v. Field *et al.*, District Court for the Northern District of Mississippi, it was decided that a surviving partner, not being authorized by the articles of copartnership or by the will of his deceased partner, has no legal right to continue the partnership business after the death of the deceased partner longer than is necessary to close up the business advantageously; and that upon the death of the deceased partner intestate the title to the personal property vested in the surviving partner for the purpose of being applied—1, to the payment of the partnership liabilities; 2, for a division of the residue between the surviving partner and the personal representative of the deceased partner according to the rights of each. And the legal title to the lands owned by the firm, upon the death of a deceased partner, vests in the surviving partner and the heir at law of the deceased partner as tenants in common, subject to the dower right of the widow of the deceased partner out of one moiety of the land; but the equitable title to the land vests in the surviving partner so far as the same is necessary to pay the liabilities of the partnership. The surviving partner has a right to sell the land if necessary for said purpose, publicly or privately, and a court of equity will compel the heir at law to convey the legal title vested in him by the purchaser.

IN the case of State, *ex rel.* Peyser, v. Salem Church of the Methodist Society (Ind., April, 1888; 14 Western Rep., 282), the question was as to the remedy of subscribers to a fund for the building of a church edifice, who made it a condition of their subscriptions that the house was to be free to all orthodox denominations when not occupied by the church. The court held that a remedy could not be had by mandamus, but must be sought by an action at law or in equity. The principle is thus stated: Duties imposed on a corporation, not by virtue of express law or by the conditions of its charter, but arising wholly out of contract relations, will not be enforced by mandamus, since the use of such writ is limited to the enforcement of obligations imposed by law. Where the duties of a corporation or of its trustees grow out of or result from matters of contract writs of mandate will not lie against the corporation or its trustees, either in their corporate capacity or as individuals, to compel the performance of the contract; but the party aggrieved will be left to the ordinary remedies, either at law or in equity (State v. Zanesville, &c., Turnp. R. Co., 16 Ohio St., 308; State v. Paterson, N., &c., R. Co., 43 N. J. L., 505; Kansas v. Republican R. B. Co., 20 Kans., 404; People v. Dulaney, 96 Ill., 503; High Ex. Leg. Rem., sec. 321).

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Safe Deposit Companies.

Within a comparatively short period there has sprung up in this country an entirely new class of corporations finding no exact parallel among the earlier kinds of associations known to the law. Reference is made to safe depositories, companies formed for the purpose of furnishing secure places for the deposit of valuables to all persons who comply with the rules prescribed by such companies.

The method which these companies have adopted for the carrying on of their business is to provide large vaults, divided into numerous small compartments, which compartments are rented to customers from year to year at a stipulated price. These boxes are provided with double lock, the keys of one lock being delivered to the customer and of the other retained by the company, there being a regulation that the customer shall have access only in the presence of the company's agent.

The vast number of safe deposit companies now existing throughout the United States makes it of paramount importance to the profession and to the commercial world that the legal status of these companies should be determined and that the rights, duties, obligations, and liabilities growing out of the relationship existing between the companies and their patrons and between the companies and the public should be ascertained.

Owing to the comparative newness of the subject there are few adjudicated cases determining the questions involved, and the law in this regard may well be considered unsettled.

The question of the relationship of these companies to their patrons has been presented in three ways: 1, whether they occupy the relation of landlord and tenant; or, 2, that of trustee and *cestui que trust;* or, 3, that of bailor and bailee.

The proposition that they stand to each other as landlord and tenant seems to be negatived by the contract of rental, which leaves the custody and control of the box or safe in the hands of the company and restricts the patron to such times and regulations as the company by rule prescribes.

The relationship of trustee and *cestui que trust* might render the terms of the specific contract of rental applicable, but fails to comprehend all the phases of the question. There is, however, a direct, positive trust arising out of the relation of bailor and bailee.

That they stand in the relation of bailor and bailee would seem to be the only logical deduction from a consideration of the best definitions of bailment formulated by standard authors and adopted by the courts.

"A bailment is the delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust." Story on Bailm., sec. 2. See also Schuler on Bailm., sec. 2, Kent Com., 558.

It will be noticed that bailment contemplates the delivery of personal property, and that there will be restoration and redelivery of the thing bailed, all elements of the contract between safe deposit companies and their patrons.

Owing to these points of similarity text writers have been wont to classify these contracts under the head of bailments and to place the parties in the relation of bailor and bailee, and in at least one case the courts have adopted this classification. Schuler on Bailm., sec. 96; Safe Deposit Co. v. Pollock, 85 Pa. St., 393.

Having thus ascertained the legal status of these companies, it now becomes important to ascertain the degree of responsibility to which they are held. The bailment of a safe depository corresponds to *locatio conductio* of the civil law, which was the hiring of, care, or service to be performed or bestowed on the thing delivered. In such instance the bailee was held to ordinary diligence and liable for ordinary neglect. Story on Bailm., sec. 7; Schuler on Bailm., sec. 13; Safe Deposit Co. v. Pollock, *supra.*

Such would seem to be the responsibility which attaches by operation of law in the absence of express contract. Just how far this obligation may be modified by contract is still an open question. It is, however, a well-settled principle that while the bailee may, by express agreement, increase his responsibility, he will not be permitted to lessen it beyond the limit sanctioned by public policy or positive law. Conway Bank v. The American Express Co., 8 Allen, sec. 516; Storey on Bailm., secs. 2, 31, 33, 34.

Thus, he will not be allowed to relieve himself from liability on account of his gross neglect, fraud, or his own wrong. Storey on Bailm., sec. 10 and cases cited.

We have seen that there is a trust relation existing between bailor and bailee and that under the terms of the special contract usually adopted by safe deposit companies the trust is made specific. It therefore becomes a serious question whether the responsibility of the company is not thereby increased, and whether they are not held to the highest degree of diligence, and, indeed, whether they are not bound to carry out the trust absolutely and at all events.

On the other hand it is a question whether the contract of rental does not take the case entirely out of the law of bailments and make the rights and duties of the parties depend solely upon the contract.—*Daily Advertiser.*

THE law of murder has within recent years been the subject of judicial discussion and definition. In Reg. v. Dudley, 14 Q. B. D., 273, it was held that self-preservation, as distinct from self-defense, will not make homicide justifiable. Therefore if A and B, two shipwrecked sailors, lay hold of a floating plank, which will support one but not the both of them, and A, considering his own life to have the greater "real value" to society, push B into the water and escape to land he is guilty of murder. In Reg. v. Serne, tried at the last Old Bailey Sessions, Mr. Justice Stephen gave the weight of his high authority to "the domestic fowl" dictum of Mr. Justice Foster. A, intending to steal B's fowl—which is felony—tries to shoot it and kills B by mistake. A has murdered B. But the act would not (?) be murder—if Sir James Stephen is right—had A only fired at B's fowl in fun.—*Edinburgh Law Journal.*

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Current Articles in the Magazines.

The Uncertainty of the Law. Thomas M. Cooley. *American Law Review.* May - June, 1888.

Ancient System of Land Tenure in Polynesia. W. D. Alexander. *Ibid.*

Contingent and Exorbitant Fees. P. Bliss. *Ibid.*

Constitutional Restrictions upon Legislation Concerning Villages, Towns, Cities, and Counties. J. R. Berryman. *Ibid.*

Motions for New Trials. Eugene McQuillen. *Ibid.*

Railway Crimes and Misdemeanors. Aldebert Hamilton. *Criminal Law Magazine.* May, 1888.

Self-Criminating Evidence. Note to Chastang v. State by W. W. Thornton. *Ibid.*

Auxillary Grants of Probate and Letters of Administration. Alfred Howell. *Canada Law Times.* June, 1888.

Pagan Marriages. *Ibid.*

Can the Judiciary Determine whether a Statute Exists? Guy C. H. Corliss. *Albany Law Journal.* June 9, 1888.

Address of Roger A. Pryor to Graduating Class of Albany Law School. *Ibid.*

Rights and Liabilities of Assignees of Mortgagors Different from Those of the Mortgagor Himself. W. Beatty Harlan. *Maryland Law Journal.* June 6 and 13.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

June 18.

11209. William H. Crumpton v. Maggie Crumpton. For divorce. Com. sol., Robinson White.

11210. John Harrington et al. v. Martha D. Green et al. To enforce mechanic's lien. Com. sols., William H. Manogue and Carusi & Miller.

June 19.

11211. Milton H. Gettinger v. William Gettinger et al. To sell infant's realty to invest. Com. sol, W. W. Boarman.

June 20.

11212. Arthur Herbert et al. v. John Sibley et al. For new trustee to sell part lot. Com. sol., John Ridout.

11213. Mary M. Browning v. Livingston Browning. For divorce. Com. sols., H. O. & R. Claughton.

11214. Louis W. Ritchie v. Rebecca Jones et al. Creditor's bill. Com. sol., C. H. Cragin.

11215. Amelia A. Baden v. Christopher C. McKenny et al. To sell off dower. Com. sols., Wheeler and Hoban.

11216. Robert C. Hewitt v. Ira W. Burritt et al. For injunction. Com. sol., William A. Cook.

11217. Marianna Bell v. Charles A. Bell. For divorce. Com. sol., E. B. Hay.

June 21.

11218. James H. Marr v. M. Velinda Chapman et al. For specific performance of contract. Com. sol., Samuel Maddox.

11219. The National Safe Deposit Co. v. The Chesapeake and Potomac Telephone Co. of the District of Columbia. Injunction to restrain. Com. sol., R. R. Perry.

June 22.

11220. Charles Wood v. Ella J. Wood. For divorce. Com. sol., W. T. Johnson.

June 23.

11221. The Independent Ice Co. et al. v. E. G. Johnson. For conveyance. Com. sol., Samuel Maddox.

11222. Mary E. Bailey et al. v. Elizabeth G. Burroughs et al. For partition by sale. Com. sols., Beach & Page.

CIRCUIT COURT.—New Suits at Law.

June 14.

28762. George Breitbarth v. Jacob Allricht et al. Account, $98.75. Piffs atty, F. M. Fields.

June 15.

28763. Edw. B. Bruce et al. v. John Murray. Notes, $218. Piffs atty, William G. Johnson.

28764. Marie E. Byington v. Joshua Biggs et al. Account, $17,175. Piffs atty, A. C. Bradley.

28765. Augustus Gersdorff v. Edw. Winslow. Judgment of Justice Strider.

June 16.

28766. Margaret White v. J. Hale Sypher. Account, $1,040. Piffs atty, E. H. Thomas.

28767. Nancy H. Cartter v. James A. Maloney. Notes, $200. Piffs atty, R. Fendall.

June 18.

28768. John Thompson et al. v. Earnest D. Mayer et al. Account, $177.96. Piffs atty, W. H. Shales.

June 19.

28769. Henry M. Baker v. Peter B. Meredith. Notes, $180.88. Piffs atty, F. H. Mackey.

June 21.

28770. The United States, on the relation of Mito B. Stevens et al., v. John C. Black. Mandamus. Piffs atty, R. D. Mussey.

28771. Same v. Sidney L. Willson. Mandamus. Piffs atty, Same.

28772. Edward L. Dent v. Elmer E. Imbay. Account, $439.93. Piffs atty, R. P. Jackson.

28773. Jessie C. Osborn v. Edwin P. Sherman. Note, $100. Piffs attys, Newton & Lavender.

28774. Lewis H. Douglass v. Amelia Costin et al. Judgment of Justice Mills, $22. Piffs atty, E. A. Newman.

28775. Frank Ferguson, by next friend, John T., v. Edward E. Burrough et al. Damages, $5,000. Piffs atty, L. Tobriner.

28776. James M. Peet, trading as J. M. Peet & Co., v. The Chesapeake Fire Insurance Co. of the District of Columbia. Policy, $1,500. Piffs attys, Totten and McKenney.

June 22.

28777. Lizzie Cannon v. James D. Thurston. $500. Piffs attys, Hildebrant & Morrison.

28778. Washington T. Nailor v. Frank K. Ward. Replevin. Piffs atty, D. O'C. Callaghan.

June 23.

28779. Francis A. Godfrey v. John F. Weeden. Replevin. Piffs atty, C. Carrington.

28780. Landon Cabell et al. v. Albert A. Wilson et al. $995.63. Piffs atty, William T. Bailey.

28781. Julius Bainberger et al. v. Michael Newmeyer. Account, $434.25. Piffs atty, R. E. L. White.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity.

June 27, 1888.

Zachariah Coleman v. Abraham Gibson. } 10949. Eq. Doc. 27.

Walter B. Williams, Trustee, having reported to the Court the sale of sub-lot 53, in J. W. Jones' subdivision of square 545, as the same is recorded in Liber N-K., folio 267, of the records of the Surveyor's office of the District of Columbia, under the terms of sale as set forth under a decree rendered in this suit on the 23d of March, 1888, and it further appearing from said report that Charles Ford became the purchaser of said property, at public auction, for the sum of $690.00, it is, by the Court, this 27th day of June, ordered and decreed that the said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 27th day of July, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,
26 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Arianna J. Lyles**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of May, 1888.

ELEANOR A. MAGRUDER,
ARIANNA E. WARD,
Executrices.

26 No. 3019. Ad. D. 14. J. J. Waters, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary S. Naylor v. **Henry Naylor et al.** } In Equity. No. 9327. Doc. 24.

It is, this 26th day of June, A. D. 1888, ordered that the sale reported by the Trustees in the above-entitled cause, in their report this day filed, be, and the same are severally hereby, ratified and confirmed, unless cause to the contrary be shown on or before July 26th, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said date last mentioned.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
26 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James E. Young v. **Cecelia F. Young et al.** } No. 10769. In Equity.

James S. Edwards and Westel Willoughby, the Trustees appointed herein to make sales of the real estate and premises in this cause decreed to be sold, having reported that they have made sales of all of said real estate and premises, which sales are particularly and in detail set forth in said report, it is, this 21st day of June, A. D. 1888, ordered, adjudged, and decreed that said sales will be approved and confirmed on Monday, the 23d day of July next, unless cause to the contrary be shown before that day.

Provided a copy of this order be published once a week for three successive weeks before said last-mentioned day in the Washington Law Reporter, printed and published in the city of Washington, District of Columbia.

The report states that the aggregate of the sales amounts to the sum of seventeen thousand four hundred and thirty-four dollars and sixty cents ($17,434.60).

CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.
26 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 22d, 1888.

In the case of Cecelia F. Young, Administratrix of **Robert W. Young**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
26 No. 2698. Ad. D. 13. Edwards & Barnard, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Henery**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of June, 1888.

SARAH HENERY, Ex'x, 465 F st. s. w.
26 No. 3078. Ad. D. 14. Edwards & Barnard, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 22d, 1888.

In the matter of the Estate of **Peter McIntyre**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Sister Beatrice, of Providence Hospital.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 2 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
26 C. C. Lancaster, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Wilhelm Mueller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of June, 1888.

CHARLES MUELLER, Adm'r c. t. a., 3029 M st. n. w.
26 No. 3114. Ad. D. 14. W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 26th, 1888.

In the case of Charles H. Trunnel, Executor of **Catharine Heiss** or **Hess**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 20th day of July, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
26 No. 2773. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 22d, 1888.

In the matter of the Estate of **John Farrell**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Frank Hume, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
26 S. T. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 8th, 1888.

In the matter of the estate of **Jackson Lackey**.

Application for Letters of Administration on the estate of the said deceased has this day been made by John W. Major and others, who pray that such letters may be granted to James S. Edwards.

All persons interested are hereby notified to appear in this Court on Friday, the 29th day of June next, at 11 o'clock a. m., to show cause why Letters of Administration on the estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
24 Edwards & Barnard, Proctors.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Hiram S. Litchfield**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1888.

JAS. T. PETTY, Ex'r, 638 Virginia ave. s. w.

25 No. 3095. Ad. D. 14. O. T. Thompson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

Perry Matthews et al. v. **Emeline Williams et al.** } Eq. No. 10664.

Julius Maedel, the Trustee appointed by the decree of court in this cause to sell the property involved therein, being the south 100 feet of lot 43 of S. S. Loomis' recorded subdivision of lots in square 69, in the city of Washington, D. C., having reported that he has sold the said property to Thomas M. Burt, at private sale, for the sum of eleven hundred and twenty dollars and twenty cents ($1,120.20), and subject to all taxes and the claim of Wm. L. Bramhall's interest in said property, and that the purchaser has complied with the terms of sale, it is, this 14th day of June, A. D. 1888, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

A true copy. Test: R. J. MEIGS, Clerk.

26 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Myers**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

CALDERON CARLISLE, Ex'r, Fendall Building.

25 No. 3090. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Emma C. Wright**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1888.

C. W. HOLCOMB, Ex'r,
629 F st. n. w., Washington, D. C.

25 No. 3125. Ad. D. 14. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 19th, 1888.

In the case of Randall Hagner, Administrator c. t. a. of **Robert P. Dodge**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 13th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

25 No. 2748. Ad. D. 13.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Lucretia Myers et al. v. **John J. Lindsley et al.** } Equity 10999.

It is, this 12th day of June, A. D. 1888, ordered that the sales made and reported by George E. Hamilton and J. Holdsworth Gordon, Trustees in above cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 12th day of July, A. D. 1888.

Provided a copy of this order be in inserted in the Washington Law Reporter once a week for three weeks before said day.

The report states the amount of sales to be $66,790.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

25 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Eliza S. Ray**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 24th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of May, 1888.

EDWARD F. QUALTROUGH,
ROSS LESLIE RAY, 1901 F st. n. w.,
Executors.

24 John Selden, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Lippert**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of June, 1888.

MAGDALENA LIPPERT, Ex'x,
Alley between G and H and 6th and 7th sts. n. e.

24 No. 3086. Ad. D. 14. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of June, 1888.

William H. H. Gorham v. **Henry H. Dudley, jr., et al.** } No. 11079. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, **Henry H. Dudley, jr.**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee to release sublot 54, sq. 361, in the city of Washington, D. C., from a deed of trust, recorded in liber No. 850, fol. 415, to Henry A. Duncanson and Henry H. Dudley, trustees, both deceased, on ground that the indebtedness secured has been paid.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

J. Stanley Brown et al. v. **Harriet Abbot.** } No. 11136. Eq. Docket No. 28.

On motion of the plaintiffs, by Mr. J. H. Ralston, their solicitor, it is ordered that the defendant, **Harriet Abbot**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare deed to Harriet Abbot, recorded in liber 1253, folio 303, &c., of the land records of the District of Columbia, a cloud upon title to so much of lot 29, S. P. Brown's subdivision of Mt. Pleasant as is claimed by plaintiffs herein and specifically described in bill of complainant herein, and for injunction, &c.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Henry Boegeholz**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of June, 1888.

CHARLOTTE BOEGEHOLZ, Adm'x, 1139 7th st. n. w.

25 No. 3121. Ad. D. 14. Chapin Brown, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lucy L. Hunter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of June, 1888.

MARY ANN McCLAIN, Ex'x,
1799 Pa. ave., Washington.

25 C. A. Brandenburg, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Robert E. Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of June, 1888.

CARLOTTA M. MOORE, Adm'x c. t. a.,
734 5th st. n. w.

25 No. 3073. Ad. D. 14. Wm. F. Mattingly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of June, 1888.

Annie Miller v. **Daniel Miller.** } No. 11048. Eq. Docket 28.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **Daniel Miller**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce "a vinculo matrimonii" upon the ground of willful and uninterrupted desertion for over three years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
25 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Obedience McKenney**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

C. C. McKENNEY, Adm'r, 321 G st. s. e.

24 No. 3111. Ad. D. 14. E. A. Newman, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Samuel H. Giesy**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of June, 1888.

24 CALDERON CARLISLE, Adm'r c. t. a.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Edward Parker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 6th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 6th day of June, 1888.

CARRIE V. PARKER, 471 H st. s. w.,
C. C. MEADOR, 903 13th st. n. w.,
Fitnam & Scaggs, Proctors. Administrators.

24 No. 3116. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **William T. Ware**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of May, 1888.

HUMPHREY ⋈ WARE, Adm'r, 609 B st. s. e.

Irving Williamson and Campbell Carrington, Proctors.

24 No. 3080. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

Mary Berry v. **Franklin Berry.** } No. 11151. Eq. Docket 28.

On motion of the plaintiff, by Mr. B. F. Leighton, her solicitor, it is ordered that the defendant, **Franklin Berry**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant on the grounds of cruelty and desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mabel Howell et al. v. **Samuel G. Muir.** } In Equity. 10717.

It is, by the Court, this 12th day of June, A. D. 1888, ordered that the offer to purchase the real estate in said case mentioned, made by Alfred Richards, and reported by L. Cabell Williamson, Trustee, be, and the same is hereby, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of July, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 13th day of July, A. D. 1888.

The report states the amount offered to be $2,600.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
24 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 14th, 1888.

In the case of Anthony Lulley, Administrator of **Emilie Lulley**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
25 No. 2706. Ad. D. 13. A. B. Duvall, Proctor.

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VOL. XVI. - - - - - - - No. 27

WASHINGTON, D. C. - - - - - - JULY 4, 1888

A WEEK ago last Monday the House of Representatives considered and passed a bill directing the District Commissioners and their attorney to examine certain manuscript volumes prepared by Josiah Quincy Kern and to purchase them if they shall be of opinion that the volumes comprise a complete and satisfactory revision and consolidation of all statutes and parts of statutes relating to municipal affairs in the District of Columbia in force on the 1st day December, 1887, and of all orders, regulations, and ordinances relating to such affairs made in pursuance of law and having the force and effect of law at the same date. The bill as originally reported from the District Committe provided that the amount to be paid should not exceed $5,000. This sum was cut down to $2,000. Of the beneficiary Kern and the merits of his compilation we know nothing, but the opposition to the bill showed a lamentable ignorance in Congress of the present state of District law. One of the opponents declared that the Revised Statutes relating to the District of Columbia, and the laws which have been passed since the revision, and which are embraced in the volumes of the Statutes at Large, furnish very ready information for any gentleman who seeks to know anything in relation to the District of Columbia. We do not believe there are many members of the local bar who will agree with this declaration. The opinion is pretty general that the law in force in the District is in an unsystematized and uncertain state. Heretofore we have believed that Congress knew this and that their inaction has been the result principally of a general lack of interest in duties that did not have in them a political spice. This debate has shown that many of the representatives are not aware of the confusion that exists, and it places the District in a still more hopeless state, for it will be impossible to obtain a remedy from men who do not know the mischief exists. The Revised Statutes relating to the District of Columbia constitute a fair system as far as they go, but there are other laws in force besides those contained in the revision. Section 91 continues in force all laws and ordinances of the cities of Washington and Georgetown, respectively, and of the Levy Court of the District of Columbia, not inconsistent with chapter 1 of the revision, and except as modified or repealed by Congress or the Legislative Assembly of the District since the 1st day of June, 1871. Section 92 continues in force the laws of the State of Maryland as the same existed on the 27th day of February, 1801, except as since modified or repealed by Congress or by authority thereof. Section 93 gives force and effect within the District to all general laws of the United States not locally inapplicable; also the laws made by the Legislative Assembly during its existence are still unrepealed. When we say the law is uncertain more is meant than that it is susceptible of a double construction. Examples are not infrequent showing the actual existence of the law as locally applicable to be in controversy.

What the District needs is the presence in Congress of one of her well-informed citizens to voice and urge her wants. We are at least entitled to as much consideration as some of the small, thinly settled, and poor Territories.

SUPREME COURT OF THE UNITED STATES.

PREPARED E. S. MCCALMONT.

EDWARD LELOUP
v.
THE PORT OF MOBILE.

Decided May 14, 1888.

1. Where a telegraph company is doing the business of transmitting messages between different States, and has accepted and is acting under the telegraph law passed by Congress July 24, 1866, no State within which it sees fit to establish an office can impose upon it a license tax or require it to take out a license for the transaction of such business.
2. Telegraphic communications are commerce, as well as in the nature of postal service, and if carried on between the different States is interstate commerce and within the power of regulation conferred upon Congress, free from the control of State regulations, except such as are strictly of a police character; and any State regulations by way of tax on the occupation or business, or requiring a license to transact such business, are unconstitutional and void.
3. A general license tax on a telegraph company affects its entire business, interstate as well as domestic or internal, and is unconstitutional.
4. The property of a telegraph company, situated within a State, may be taxed by the State as all other property is taxed; but its business of an interstate character cannot be thus taxed.
5. The Western Union Telegraph Company established an office in the city of Mobile, Alabama, and was required to pay a license tax under a city ordinance, which imposed an annual license tax of $225 on all telegraph companies, and the agent of the company was fined for the non-payment of this tax. In an action to recover the fine he pleaded the charter and nature of occupatian of the company, and its acceptance of the act of Congress of July 24, 1866, and the fact that its business consisted in transmitting messages to all parts of the United States, as well as in Alabama: *Held*, a good defense.

Mr. Justice BRADLEY delivered the opinion of the court.

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This was an action brought in the Mobile Circuit Court, in the State of Alabama, by the port of Mobile, a municipal corporation, against Edward Leloup, agent of the Western Union Telegraph Company, to recover a penalty imposed upon him for the violation of an ordinance of said corporation, adopted in pursuance of the powers given to it by the Legislature of Alabama, and in force in August, 1883. The ordinance was as follows, to wit: "Be it ordained by the Mobile Police Board, that the license tax for the year, from the 15th of March, 1883, to the 15th of March, 1884, be, and the same is hereby, fixed as follows: . . .

"On telegraph companies, $225. . . .

"Be it further ordained: For each and every violation of the aforesaid ordinance the person convicted thereof shall be fined by the recorder not less than one nor more than fifty dollars."

The complainant averred that the defendant, being the managing agent of the Western Union Telegraph Company, a corporation having its place of business in the said port of Mobile, and then and there engaged in the business and occupation of transmitting telegrams from and to points within the State of Alabama and between the private individuals of the State of Alabama, as well as between citizens of said State and citizens of other States, committed a breach of said ordinance by neglecting and refusing to pay said license to the said municipal corporation. The complainant further averred that for this breach the recorder of the port of Mobile imposed on the defendant a fine of $5, for which sum the suit was brought.

The defendant pleaded that at the time of the alleged breach of said ordinance he was the duly appointed manager, at the port of Mobile, of the Western Union Telegraph Company. That said company "was, prior to the 5th day of June, 1867, a telegraph company duly incorporated and organized under the laws of the State of New York, and by its charter authorized to construct, maintain, and operate lines of telegraph in and between the various States of the Union, including the State of Alabama; that on said 5th day of June, 1867, the said telegraph company duly filed its written acceptance with the Postmaster-General of the United States of the restrictions and obligations of an act of Congress entitled 'An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 24, 1866. That in accordance with the authority of its charter and the said act of Congress, and by agreement with the railroad companies, the said telegraph company constructed its lines and was at the time of the said alleged breach of ordinance, maintaining and operating said lines of telegraph on the various public railroads leading into or through the said port of Mobile, to wit, the Mobile and Ohio Railroad, a railroad extending from the said port of Mobile, in Alabama, through the States of Mississippi, Tennessee, Kentucky, to Cairo, in the State of Illinois; the Louisville and Nashville Railroad, extending from Cincinnati, in the State of Ohio, through said port of Mobile to New Orleans, in the State of Louisiana, with a branch extending from said State of Alabama over the Pensacola and Louisville Railroad to Pensacola, in the State of Florida. That the said telegraph lines so running into or through said port of Mobile connected with and extended beyond the termini of the said railroads over other railroads, making continuous lines of telegraph from the office of said company, in said port of Mobile, to, through, and over all of the principal railroads, post-roads, and military roads in and of the United States, and having offices for the transaction of telegraph business in the departments at Washington, in the District of Columbia, and in all of the principal cities, towns, and villages in each of the United States and in the Territories thereof. That all of said railroads so leading into and through the said port of Mobile and elsewhere in the United States are public highways, and that the daily mails of the United States are regularly carried thereon, under authority of law and the direction of the Postmaster-General, and that said railroads and each of them are post-roads of the United States. That said telegraph lines are also constructed under and across the navigable streams of the United States in the State of Alabama and in the other States of the Union, but in all cases said lines are so constructed and maintained as not to obstruct the navigation of such streams and the ordinary travel on such military and post-roads. That said telegraph company was before and during said year commencing March 15, 1883, and now is engaged in the business of sending and receiving telegrams over said lines for the public between its said office in the port of Mobile and other places in other States and Territories of the United States and to and from foreign countries; also in sending telegraphic communications between the several departments of the Government of the United States and their officers and agents, giving priority to said official telegraphic communications over all other business. And defendant avers that said official telegrams have been and are sent at rates which have been fixed by the Postmaster-General annually since the said 5th of June, 1867. And defendant avers that as the manager of said company and in its name and under its direction and appointment and in no other manner or capacity was he engaged in said telegraph business at the time and the manner as alleged in said complaint."

To this plea a demurrer was filed and sustained by the court and judgment was given for the plaintiff, and on appeal to the Supreme Court of Alabama this judgment was affirmed. The present writ of error is brought to review the judgment of the Supreme Court. That court adopted its opinion given on a previous occasion between the same parties, in which the Circuit Court had decided in favor of the defendant, and its decision was reversed. In that opinion the Supreme Court said: "The defense was that the ordinance is an attempt to regulate commerce and violative of the clause of the Constitution of the United States which confers on Congress the 'power to regulate commerce with foreign nations and among the several States.' The Circuit Court held the defense good and gave judgment against the port of Mobile. Is the ordinance a violation of the Constitution of the United States? We will not gainsay that this license tax was imposed as a revenue measure—

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as a means of taxing the business, and thus compelling it to aid in supporting the city government. That no revenue for State of municipal purposes can be derived from the agencies or instrumentalities of commerce no one will contend. The question generally mooted is how shall this end be attained. In the light of the many adjudications on the subject, the ablest jurists will admit that the line which separates the power from its abuse is sometimes very difficult to trace. No possible good could come of any attempt to collate, explain, and harmonize them. We will not attempt it. We confess ourselves unable to draw a distinction between this case and the principle involved in Osborne v. Mobile, 16 Wall., 479. In that case the license levy was upheld, and we think it should be in this. Joseph v. Randolph, 71 Ala., 499."

In approaching the question thus presented it is proper to note that the license tax in question is purely a tax on the privilege of doing the business in which the telegraph company was engaged. By the laws of Alabama in force at the time this tax was imposed the telegraph company was required, in addition, to pay taxes to the State, county, and port of Mobile on its poles, wires, fixtures, and other property at the same rate and to the same extent as other corporations and individuals were required to do. Besides the tax on tangible property they were also required to pay a tax of three-quarters of 1 per cent. on their gross receipts within the State.

The question is squarely presented to us, therefore, whether a State, as a condition of doing business within its jurisdiction, may exact a license tax from a telegraph company, a large part of whose business is the transmission of messages from one State to another and between the United States and foreign countries, and which is invested with the powers and privileges conferred by the act of Congress passed July 24, 1866, and other acts incorporated in Title LXV of the Revised Statutes. Can a State prohibit such a company from doing such a business within its jurisdiction unless it will pay a tax and procure a license for the privilege? If it can it can exclude such companies and prohibit the transaction of such business altogether. We are not prepared to say that this can be done.

Ordinary occupations are taxed in various ways, and, in most cases, legitimately taxed. But we fail to see how a State can tax a business occupation when it cannot tax the business itself. Of course the exaction of a license tax as a condition of doing any particular business is a tax on the occupation, and a tax on the occupation of doing a business is surely a tax on the business.

Now, we have decided that communication by telegraph is commerce, as well as in the nature of postal service, and if carried on between different States, it is commerce among the several States, and directly within the power of regulation conferred upon Congress, and free from the control of State regulations, except such as are strictly of a police character. In the case of The Pensacola Telegraph Company v. The Western Union Telegraph Company (96 U. S., 1) we held that it was not only the right but the duty of Congress to take care that intercourse among the States and the transmission of intelligence between them be not obstructed or unnecessarily incumbered by State legislation; and that the act of Congress passed July 24, 1866, above referred to, so far as it declares that the erection of telegraph lines shall, as against State interference, be free to all who accept its terms and conditions, and that a telegraph company of one State shall not, after accepting them, be excluded by another State from prosecuting its business within her jurisdiction, is a legitimate regulation of commercial intercourse among the States, and is also appropriate legislation to execute the powers of Congress over the postal service. In Western Union Telegraph Company v. Texas (105 U. S., 460) we decided that a State cannot lay a tax on the interstate business of a telegraph company, as it is interstate commerce, and that if the company accepts the provisions of the act of 1866 it becomes an agent of the United States, so far as the business of the Government is concerned; and State laws are unconstitutional which impose a tax on messages sent in the service of the Government, or sent by any persons from one State to another. In the present case, it is true, the tax is not laid upon individual messages, but it is laid on the occupation or the business of sending such messages. It comes plainly within the principle of the decisions lately made by this court in Robbins v. The Taxing District of Shelby County, 120 U. S., 489, and Phila. and Southern S. S. Co. v. Pennsylvania, 122 U. S., 326.

It is parallel with the case of Brown v. Maryland (12 Wheat. 419). That was a tax on an occupation, and this court held that it was equivalent to a tax on the business carried on—(the importation of goods from foreign countries)—and even equivalent to a tax on the imports themselves, and therefore contrary to the clause of the Constitution which prohibits the States from laying any duty on imports. The Maryland act which was under consideration in that case declared that "all importers of foreign articles or commodities, &c., and all other persons selling the same by wholesale, &c., shall, before they are authorized to sell, take out a license, . . . for which they shall pay $50," &c., subject to a penalty for neglect or refusal. Chief Justice Taney, referring to the case of Brown v. Maryland in Almy v. State of California (24 How., 169, 173), in which it was decided that a State stamp tax on bills of lading was void, said: "We think this case cannot be distinguished from that of Brown v. Maryland. That case was decided in 1827, and the decision has always been regarded and followed as the true construction of the clause of the Constitution now in question." . . . "The opinion of the court, delivered by Chief Justice Marshall, shows that [the case] was carefully and fully considered by the court. And the court decided that this State law [the Maryland law under consideration in Brown v. Maryland], and the mode of imposing it, by giving it the form of a tax on the occupation of the importer, merely varied the form in which the tax was imposed, without varying the substance."

But it is urged that a portion of the telegraph company's business is internal to the State of Alabama, and therefore taxable by the State. But that fact does not remove the difficulty.

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The tax affects the whole business without discrimination. There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation, without the imposition of a tax which covers the entire operation of the company.

The State court relies upon the case of Osborne v. Mobile (16 Wall., 479), which brought up for consideration an ordinance of the city requiring every express company or railroad company doing business in that city, and having a business extending beyond the limits of the State, to pay an annual license of $500; if the business was confined within the limits of the State the license fee was only $100; if confined within the city it was $50, subject in each case to a penalty for neglect or refusal to pay the charge. This court held that the ordinance was not unconstitutional. This was in December term, 1872. In view of the course of decisions which have been made since that time it is very certain that such an ordinance would now be regarded as repugnant to the power conferred upon Congress to regulate commerce among the several States.

A great number and variety of cases involving the commercial power of Congress have been brought to the attention of this court during the past fifteen years which have frequently made it necessary to re-examine the whole subject with care; and the result has sometimes been that in order to give full and fair effect to the different clauses of the Constitution the court has felt constrained to recur to the fundamental principles stated and illustrated with so much clearness and force by Chief Justice Marshall and other members of the court in former times, and to modify in some degree certain dicta and decisions that have occasionally been made in the intervening period. This is always done, however, with great caution, and an anxious desire to place the final conclusion reached upon the fairest and most just construction of the Constitution in all its parts.

In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce or on the receipts derived from that transportation or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress. This is the result of so many recent cases that citation is hardly necessary. As a matter of convenient reference we give the following list: Case of State Freight Tax, 15 Wall., 232; Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S., 1; Mobile v. Kimball, 102 U. S., 691; W. U. Tel. Co. v. Texas, 105 U. S., 460; Moran v. N. Orleans, 112 U. S., 69; Gloucester Ferry Co. v. Pa., 114 U. S., 196; Brown v. Houston, 114 U. S., 622; Walling v. Michigan, 116 U. S., 446; Picard v. Pullman Southern Car Co., 117 U. S., 34; Wabash Railway Co. v. Illinois, 118 U. S., 557; Robbins v. Shelby Taxing Dist., 120 U. S., 489; Phila. & South. S. S. Co. v. Pa., 122 U. S., 326; W. U. Tel. Co. v. Pendleton, Ib., 347; Ratterman v. W. U. Tel. Co. ——.

We may here repeat, what we have so often said before, that this exemption of interstate and foreign commerce from State regulation does not prevent the State from taxing the property of those engaged in such commerce located within the State as the property of other citizens is taxed, nor from regulating matters of local concern which may incidentally affect commerce, such as wharfage, pilotage, and the like. We have recently had before us the question of taxing the property of a telegraph company—in the case of W. U. Tel. Co. v. Massachusetts, 125 U. S., 530.

The result of the conclusion which we have reached is that the judgment of the Supreme Court of Alabama must be reversed, and the cause remanded with instructions to reverse the judgment of the Mobile Circuit Court; and it is so ordered.

UNITED STATES COURT OF CLAIMS.

J. Y. SHANTZ & SONS v. UNITED STATES.

1. Where, under section 3061 of Revised Statutes, an importer has obtained a release of merchandise, seized by the Government for an alleged violation of the revenue laws, by paying its appraised value, such payment, being with a full knowledge of the facts, is a voluntary compromise and cannot be recovered back, even though the seizure was orignally illegal.
2. An offer of settlement does not bind the party making it unless it has been accepted as made and prior to its withdrawal.

Chief Justice RICHARDSON delivered the opinion of the court:

Two distinct claims are presented in this case upon different facts though growing out of transactions alike in some particulars.

The claimants in July, 1884, imported from Canada into the United States at the port of Detroit, in Michigan, several lots of vegetable buttons consigned to different parties. The customs officers at Detroit seized the goods as forfeited for the alleged reasons that in the invoices for entry they were fraudulently undervalued in that the cost of the cartons and packing were not added to the value of the goods as required, according to the interpretation of the law enforced by the customs officers under rulings of the Treasury Department. (R. S., sec. 2839.)

The claimant made application for the release of the goods under the following provisions of the Revised Statutes:

"SEC. 3081. The collectors of the several districts of the United States, in all cases of seizure of any merchandise for violation of the revenue laws, the appraised value of which, in the district wherein such seizure shall be made, does not exceed $1,000, are hereby authorized, subject to the approval of the Secretary of the Treasury, to release such merchandise on payment of the appraised value thereof."

The Secretary of the Treasury approved the application and authorized the release on payment of the appraised value.

The goods were thereupon appraised, the claimants paid $657, and the goods were released to them.

They now seek to recover back the money so paid on the ground that the law did not require the cost of cartons and packing to be included

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in the valuation, and so the seizure was illegal, and they paid the money in duress of their goods and for the purpose of releasing them from illegal detention.

In support of the allegation of illegality of seizure upon the grounds stated, they rely wholly upon the decision of the Supreme Court in Oberteuffer v. Robertson (116 U. S. R., 499). A careful examination of that case shows that what the court decided was this, that the cost or value of cartons and packing are not dutiable items, either by themselves or as part of the market value of the goods, unless they be of a material or form designed to evade duties or are designed for use otherwise than in a *bona fide* transportation of the goods to the United States, in which latter cases they are dutiable.

All the circumstances under which the goods involved in the present claim were seized are not before us. They might have been seized in mistake of law as to whether any cartons and packing were to be included in the cost, or in mistake of fact as to whether these particular cartons and packing were of the kind and description required to be so included, or were exempt under the statutes, or there may have been no mistake of either law or fact.

What appears is that when their goods were seized the claimants applied for a release upon the terms prescribed by statute; that the Secretary of the Treasury approved the application, and that the goods were surrendered to them upon payment of the sum determined as provided by law.

This was clearly a voluntary settlement and compromise, with full knowledge of all the facts of the matters at issue between the parties, whatever they were, in accordance with statute provisions on the subject, and is binding alike on the claimants and the defendants. Money so paid cannot be recovered back.

The claimants further urge that they are entitled to refund of the money thus paid, on the ground that the Secretary of the Treasury has authorized its repayment in his circular of February 2, 1886. After the decision of the Supreme Court in the Oberteuffer case the Secretary, by that circular, instructed collectors of customs that "the rule thus laid down in this decision will be applied to all future importations and liquidated entries, and also to all entries where the requirements of law as to protest, appeal, institution of suits, &c., have been fully complied with."

The difficulties of the claimants' case, as founded on this circular, are twofold: First, the exact description of the claimants' goods do not so appear that we can determine whether or not they come within the rule of exemption laid down in that case. Second, it does not appear that "the requirements of law as to protest, appeal, institution of suit, &c., have been complied with," and the contrary seems to be apparent from the findings. Nothing is due the claimant by reason of that circular.

As to the second claim, the facts, concisely stated, are these: Previously to the importation of the goods seized in 1884, as before stated, the claimants had imported several invoices of like goods valued by them in their invoices in the same manner.

Fearing that they might have more trouble and be subjected to fines and penalties on account of the former importations, they voluntarily proposed to the Secretary of the Treasury, on the 29th of July, 1884, to pay the additional duty which would accrue from the cartons and packings if added to the valuation, stating such additional duty at $373.80.

The Secretary directed that the claimants be informed that, before considering this offer it would be necessary for them to deposit the sum offered. The money was thereupon deposited with the collector and turned over to the assistant treasurer, and an investigation was made about July 31, 1884.

July 5, 1884, before any further action had been taken on that offer, the claimants wrote a letter to the Secretary, adding $1,695.61 to their former offer. At the same time they deposited that additional sum with the collector, and it was turned over to the assistant treasurer.

October 3, 1874, before the acceptance of these offers, they again wrote to the Secretary, withdrawing the propositions previously made, and offering the sum of $1,031.75 in lieu thereof.

December 29, 1884, the Secretary of the Treasury declined this offer and ordered the money deposited to be returned to the claimants.

January 19, 1885, a draft for the amount of both deposits, $2,069.41, upon the assistant treasurer at Chicago, payable to the order of the claimants, was made, duly signed by the Secretary of the Treasury, and transmitted to the district attorney to be delivered to them. It was never so delivered, and it does not appear that they were notified as to what had been done.

Subsequently, in May, 1885, the Secretary of the Treasury, who was the successor of the Secretary by whom the offers had been rejected, considered the matter anew.

May 14, 1885, after receiving a report of the facts from the Solicitor of the Treasury, and after the district attorney had returned the draft, the Secretary addressed a letter to the Solicitor, compromising the claim "by accepting the said sum of $2,069.71," and about the same time caused the money to be drawn from the assistant treasurer and covered into the United States Treasury. The original draft was thereupon canceled.

The claimants, upon these facts, sue for the money deposited by them upon the ground that the offer accepted had been withdrawn before acceptance and that a different offer had been made which had never been accepted.

It is familiar law, so well settled that it is hardly necessary to cite any of the numerous authorities, that to make a valid contract the minds of both parties must meet on the same points, and that in any negotiation an offer on the one side must be accepted on the other, if at all, upon the very terms proposed, and that any departure therefrom is no acceptance. Tilley v. County of Cook, 103 U. S., 161. Furthermore, the offer may be withdrawn at any time before acceptance, and when withdrawn the negotiation is at an end.

In the case of Minneapolis and St. Louis Railway v. Columbus Rolling Mill, 119 U. S. R., 149, the defendant offered to sell the plaintiff two thousand to five thousand tons of iron rails at $54 a ton, the offer to be accepted prior to December 20. On December 16 the plaintiff

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accepted for 1,200 tons only. December 16 defendant declined this acceptance. December 19 plaintiff telegraphed acceptance of 2,000 tons, and asked for a reply. No reply was made to that telegram nor to several others of a subsequent date making inquiries about it.

The court held that the offer to sell was rejected by plaintiff's offer in reply to purchase a different quantity, and that upon the defendant's declining that offer the negotiation was closed, and the plaintiff could not afterward fall back on the defendant's original offer and make a valid acceptance even before the time therein specified had expired.

In the present case, as in that, the minds of the parties never met.

July 29, 1884, the claimants offered, as a compromise, $373.80. July 5 they offered $1,695.61 additional. October 3, 1884, they withdrew their former proposals and offered $1.031.75. May 14, 1885, the Secretary undertook to accept $2,065.71. So the parties never agreed, and the negotiation was at an end.

The claimant is entitled to recover the sum of $2,069.41, and judgment will be so entered.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

WALKER & SIMMONS, Petitioners, v. DISTRICT OF COLUMBIA.

No. 28063. LAW.

Decided April 23, 1888.

The CHIEF JUSTICE and JUSTICE COX and JAMES sitting.

1. On a proceeding by *certiorari* against the District Commissioners to obtain the quashing of an illegal tax, the return of the Commissioners to the writ commanding a certification of the record of the proceedings stated that the record could not be found and that they could return nothing more than the charge of the tax upon the collector's books. *Held*, that, without affirming the validity of the tax, the prayer for relief must be denied, since the court could pass no order with reference to any record or proceeding not before the court.
2. An ordinance directing a street to be paved at a cost of so much per square foot, but leaving to subordinates the measurement of the work done and the apportionment of the cost among the adjoining property holders, is not a delegation of legislative authority.
3. While the objection that the dollar mark is not prefixed to the figures representing the tax charged against the property is ordinarily fatal, yet where the figures are in such detail and plain connection with other figures that no one can fail to understand their meaning, the court will not give much weight to the objection.
4. Where an ordinance requires that after an assessment of the tax has been made notice shall be given to the owner, and that interest upon the tax shall be charged from the date of the notice until paid, the failure to give notice does not affect the validity of the assessment—it only prevents the charge of interest upon the tax.
5. Where the illegal tax can be separated from that which is legal the court will not quash the whole assessment, but only the illegal portion. Alexandria Canal R. & B. Co. v. District of Columbia, 1 Mackey, 217, distinguished from the present case.
6. Where the duty of assessing the tax for paving work done is assigned by law to a certain officer, but before the assessment can be made the office becomes extinct by expiration of the city's charter, an assessment of the tax for the work done is invalid if subsequently made by an unauthorized official.
7. It seems that the power "to prevent and remove nuisances" granted by its charter to the city of Washington did not confer any authority to levy the cost of removing a nuisance as a special tax upon the lot and to sell it for non-payment.

Petition for a writ of *certiorari*, for the purpose of obtaining the cancellation of certain illegal tax assessments.

The case is sufficiently stated in the opinion.

BIRNEY & BIRNEY for petitioners.

RIDDLE & DAVIS for the District.

Mr. Justice COX delivered the opinion of the court.

The petitioners set forth that they are the owners of certain real estate in Washington, being lot 2, square 970; that in pursuance of old ordinances of the city of Washington certain taxes were levied upon the lot— two nuisance taxes of $2.87 and $1,167.37; two improvement taxes for paving in front of the lot, one in December, 1874, for $460.37, and the other in August, 1871, for $134.28. They claim that all of these assessments are erroneous and illegal, and they pray the court for a writ of *certiorari* to the District authorities commanding them to produce all the records and proceedings relative to those taxes and that the court will quash the assessments.

The first taxes complained of are two relating to the nuisances. It appears that an alleged nuisance existed upon the property in question, which consisted of a depression below the grade of the street, and which was filled with stagnant water, necessitating the filling up of the depression. That was done by city authorities, and the cost of it was levied as a tax upon the lot. What the nuisance was for which the tax of $2.87 was levied does not appear.

The return of the Commissioners is made, and they file an answer in which, as to the nuisance, they disclose that all the papers have disappeared in consequence of the changes in the form of government and the location of the public archives in the office, and that they can return nothing except what appears to be a charge upon the collector's books of $2.87 and $1,167.37 for nuisance taxes.

According to the practice in *certiorari*, as we understand it, we can pass no order with reference to any record or proceeding that is not before the court. The taxes may be illegal, or there may be an error in matter of form; but we cannot set aside or affirm a judgment or proceeding in an inferior tribunal unless it is before this court. Consequently, with reference to these taxes, we simply must deny the relief prayed. This does not involve, by any means, an affirmance of the legality of the taxes levied. Of course, if a sale is attempted to be made, in pursuance of this assessment for the nuisance tax, whoever claims title must prove a compliance with all the requirements of the law, and the adverse party can take advantage of all defects of proof.

There is also a question whether a particular

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notice was given, but as that affects only the question of interest, if a sale is attempted to be made for an amount including interest, that is a matter of defense; and perhaps relief can be obtained by injunction, but that is immaterial here.

I pass on, therefore, to the tax for improvements in front of the lot in question. There are various objections made to this tax.

First, it is said that the ordinances authorizing the paving of footways are void in law, because the amount of the tax is not specified, but it is left to be made precise by future measurements of subordinates or to be defeated by acts of the owners; in other words, that the taxes cannot be imposed in advance. It appears that the practice was to advertise at the beginning of every year for bids for all the work that might be needed in the shape of paving, guttering, &c., in the different wards during the year. The ordinance which was exhibited here simply directs that certain work be done, and that a tax be levied for the cost on the lot in question. It is virtually an ordinance that work costing so much a foot or yard shall be done, but leaving only one thing to be ascertained by subordinates, and that is the measurement of the work and the apportionment of the cost among the different proprietors, according to frontage, area, or valuation. We do not see that there is anything here like the delegation of the limited legislative power conferred upon the corporation of Washington to subordinates. It left to the subordinates only the ascertainment, by computation, of results, and therefore that legislation is not objectionable in the respect mentioned.

Another objection is that no sum is assessed because there is no dollar mark prefixed to the figures. We are all aware of the decisions of the Supreme Court and of this court that this objection is ordinarily fatal; but we are not disposed to give much weight to it in this case, because the figures are in such detail and plain connection with other figures that no one can fail to understand it.

Another objection is that the records do not show notice. The ordinance requires that after the assessment shall have been made notice shall be given to the owner and interest upon the tax shall be charged from the date of the notice until paid. That is a question that has nothing to do with the assessment, and therefore nothing to do with what is before us. The assessment is the official ascertainment of the amount of the tax to be charged upon the property. Notice is something to be given afterward, in order to charge the delinquent owner with interest. That is a matter *in pais*. If the sale is attempted to be made for an amount which includes interest, possibly the sale might be enjoined, or this would constitute a defense to claim of title under it. But we have nothing to do with that. All that we can do is to judge of the validity of a proceeding already consummated. A notice is something outside of the assessment, and therefore not a subject for our consideration in this proceeding.

Then it is alleged that the charges for gutters, cobble stones, and gutter stones are in each case illegal; that they should have been made not against private property but against ward funds. We have come to the conclusion that that particular item in the assessment is erroneous, although it amounts to but $29.25—and to that extent that the assessment should be set aside as erroneous. But that does not involve the reversal of the whole proceeding. This item is easily distinguishable from the rest. It is not like the case of the Alexandria Canal Company v. District of Columbia, 1 Mackey, 217, in which a gross sum was charged upon the property and franchise of the company.

In that case we held that the District had no authority to tax the franchise of the corporation, and as the tax was a gross sum charged upon the franchise and other property, and one could not be distinguished from the other in the amount charged, we held that the whole assessment was illegal. In this case, however, the illegal item can be easily separated from the others.

There are several other minor objections to which we do not attach any weight and do not think it necessary to consider in detail.

So much for the first assessment for a payment.

The Eslin paving tax was laid under an ordinance passed in December, 1870, and the work is supposed to have been done in April, 1871. The charters for the two cities expired on the 1st of June, 1871. Under the ordinance of the corporation an officer was to make the assessment who was designated the commissioner of improvements. His office expired with the charters of the two cities, and the law did not designate anybody who was to succeed him and discharge his duties. There was, therefore, nobody who was authorized by law to make an assessment in pursuance of the ordinance under which this work was done. When we look at the assessment we find that apparently it was made by Mr. Forsyth, first assistant surveyor, and Frederick Fritz, commissioner of the Sixth ward. These officers had no authority under any act of Congress or ordinance of the old corporation or any law of the District government. Therefore the assessment was made without authority.

Without considering any other objections we can do nothing else than set aside the assessment as made without authority. There are some other objections which it is not necessary to consider. That is all that we find it necessary to say with reference to that.

I should have said, with reference to the first tax, for a nuisance, that we are free to say (although we are not called upon to express any opinion about the quality of the assessment in point of form, because it is not before us) that we do not find in the charter under the power "to prevent and remove nuisances" any authority to levy the cost of removing a nuisance as a special tax, upon the lot, and to sell it for non-payment. We cannot quash the assessment, because it is not before us; but that general proposition suggests itself to us.

IN Judge Clifford's court, in the case of Augustin J. Ambler, of Washington, D. C., against Rodney M. Whipple, a verdict for $1,002,491.24 was rendered in favor of the plaintiff. This is the largest verdict returned in a single case in Chicago for years.—*Chicago Legal Adviser.*

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SUPREME COURT OF PENNSYLVANIA.

CAROTHERS' APPEAL.

Decided January 9, 1888.

1. A grant of power to a corporation to "transport and convey freight, live stock, passengers, and any other traffic" does not authorize it to engage in the business of producing and distributing natural gas, the delivery being a mere incident to the production, which is the main and primary element in such a business.
2. But any authority to buy, maintain, and manage "any work or works, public or private, which may tend or be designed to improve, increase, facilitate, or develop trade," will be held to include the operation of natural-gas works and the construction and maintenance of pipes for distributing the product thereof.
3. A corporation authorized in the above manner to produce and supply natural gas, incorporated prior to the act of May 29, 1885, and vested with a general right of taking property for the purposes of its business, is subject to the provisions of this act as to the manner in which damages shall be ascertained and recovered.
4. It is only necessary that the titles of an act should fairly give notice of its subject, so as reasonably to lead to an inquiry into its body. If this requirement is not fully complied with the act is not unconstitutional except as to the part which is not described or designated in the title.
5. Whether a corporation created by what is popularly known as an "omnibus charter" may be permitted to gather up into one corporate hand all the powers and franchises of the Commonwealth is still an open question.

Opinion by WILLIAMS, J.

The plaintiff in the court below is the owner of a tract of land. The defendant is a corporation claiming the right of eminent domain, and seeking by virtue thereof to enter upon the plaintiff's land and lay under the soil pipes for the transportation of natural gas from its wells in Westmoreland County to its customers in and about the city of Pittsburg. The plaintiff denies that the defendant possesses this right for the purpose for which it is sought to exercise it, and asks the court to restrain its exercise, alleging that the production, transportation, and supply of natural gas is not among the objects which the company has power to enter upon, either under the provisions of the act of 1871, which created it, or those of 1885, which provided for the incorporation and organization of natural-gas companies.

The decision of this case makes it necessary, therefore, to ascertain what powers were conferred upon this company by the act of incorporation, and to what extent they have been enlarged or diminished by the act of 1885. The act of March 23, 1871, incorporated the Empire Contract Company with power to change its name by the action of its stockholders, and then clothed it with "all the rights, powers, privileges, franchises, and immunities" which had been given to the Pennsylvania Company by an act approved April 7, 1870.

Under this authority the Empire Contract Company was organized, began business, changed its name several times, and on March 11, 1884, was sold by the sheriff of Dauphin County on a judgment obtained by the Commonwealth for unpaid taxes. The purchasers then proceeded in May, 1884, to organize the company under the name of the Philadelphia Company, in accordance with the act of 1878, and filed an acceptance of the provisions of the sixteenth article of the Constitution, as required by that act.

Upon its reorganization the Philadelphia Company possessed all the powers conferred directly by the act of incorporation and all those possessed by the Pennsylvania Company under the act of April 7, 1870. Among the latter were the following:

"1. To act as a contractor or builder, and as such to build, construct, maintain, or manage for others.

"2. To act as principal, and as such to build, construct, maintain, or manage for itself.

"3. To act as a purchaser, and as such to buy, maintain, or manage in its own name or otherwise 'any work or works, public or private, which may tend or be designed to improve, increase, facilitate, or develop' either of the following objects, viz: (1) trade; (2) travel; (3) transportation and conveyance of (*a*) freight; (*b*) live stock; (*c*) passengers; (*d*) any other traffic by land or water from or to any part of the United States or Territories thereof. It was also invested with power to "enter upon and occupy the lands of individuals or companies on making payment therefor or giving security according to law."

Soon after its organization the Philadelphia Company turned its attention toward the production and supply of natural gas as a fuel, and in July, 1884, began its operations in the Murraysville field. These were conducted on a large scale, and the master finds that prior to the taking of the testimony before him the company had thirteen lines of gas pipes conveying gas to customers, were supplying about eleven hundred factories and dwellings with fuel equivalent to ten thousand tons of coal per day, and had an actual cash investment in the business of over eight millions of dollars. If the company has the right to engage in this business under its act of incorporation it has the right of eminent domain under the same act. If the act of incorporation does not authorize it then as to this business, it is a private association and without the power to enter upon the plaintiff's land. The master and the court below held that the company was authorized to enter in its corporate character upon this business, and rested their conclusion upon the proposition that gas is freight, and that conducting it through pipes from the wells to the consumers is the transportation of freight. But a transportation company provides simply the means for transportation of freight for customers at certain prices. This company produces a commodity which it takes to market and sells. The gas is produced at the wells. It is wanted at the mills and dwellings of the city. The pipe lines laid by this company serve to convey the gas from its wells to its own customers, to whom it is sold and delivered. The transportation is incidental to the production and supply of gas. The situation is precisely the same as in the case of illuminating gas, which is manufactured, stored, and conveyed by pipes to the places of consumption. The business is that of making and supplying gas for light. The transportation to the customer is incidental. The same is also true of water companies. They produce, store, and supply to customers water. Transportation

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by means of pipes is the means of delivery, and is a mere incident of the business. The business of the Philadelphia Company is, in our opinion, that of a fuel-gas company, viz., the production and distribution of natural gas, and the transportation of the gas is the necessary means of delivery to its customers, and nothing more. Had it the power to engage in the business in 1884? It will be seen by our analysis of the grant in the act of incorporation that the company had the power to build, &c., any work, public or private, which "may tend or be designed to improve, increase, facilitate, or develop trade."

In the preamble to the act of 1885 the Legislature declares that natural gas has become a "prime necessity for use as a fuel and otherwise in the development of trade." It thus applies to this business the very words employed in the act of incorporation to describe the powers of this company. It is, moreover, part of the current history of the Commonwealth that the discovery and use of natural gas has facilitated and cheapened and increased the production of manufactured articles of all descriptions where heat is employed in the generation of steam or in the processes of manufacture. By cheapening and increasing production trade has been stimulated, facilitated, and developed wherever the natural gas has been made available as a fuel. We conclude, therefore, that the works by which the gas is produced from the earth, transported to the factories and dwellings of Pittsburg, and then delivered to customers are works that "tend and are designed to improve, increase, facilitate, and develop trade," and are therefore within the powers granted to this company. If so, the Philadelphia Company is rightfully engaged as a corporation in this business by virtue of its own charter.

The act of of 1885 declares the transportation and supply of natural gas to be a public use, and, the days of special charters having gone by, provides by general law for the "incorporation and regulation of natural-gas companies," but does not diminish the power of any corporation in existence by virtue of a special charter. This company having the right to engage in this business, had, by express words, the right of eminent domain, and could enter upon lands without the aid of the act of 1885. But it is objected that the act of incorporation did not provide the machinery by which the value of property taken or injured could be ascertained and a judgment obtained therefor, and for that reason it is urged that the grant of eminent domain cannot be sustained. The grant is in these words: "The company hereby created shall also have power to enter upon and occupy the lands of individuals or companies on making payment therefor or giving security according to law for the purpose of erecting," &c.

The proceedings to secure the adjustment of the damages were to be "according to law." Had the company built a railroad, under this provision the general laws regulating the assessment of damages against railroad companies would have provided the mode of procedure. That they would have been applicable is very clear from the words of the act of 1849. This act provides that "whenever a special act of the General Assembly shall hereafter be passed, authorizing the incorporation of a railroad company," the manner of its organization; its powers, privileges and obligations shall be as therein set forth, and damages for its entry upon lands shall be assessed in the manner pointed out. It furnishes a system of procedure to be followed in all cases arising after its passage not specially provided for, and would have been applicable to this company if its undertaking had been to build a railroad. But the Philadelphia Company did not build a railroad. It entered upon the business of producing and supplying natural gas. The general laws regulating the exercise of the right of eminent domain and assessing damages therefor did not contemplate an entry of this description, and their provisions were not adapted to the assessment of the damages done by it.

It may be, therefore, as the plaintiff in error insists, that the land-owner had no remedy under the act of incorporation except an action at law. If so, the act of 1885 has supplied what was lacking and given a general system for the assessment of damages applicable to all natural-gas companies. In the tenth section, after the declaration that the transportation and supply of natural gas for public consumption is a public use, the Legislature declares that "any and all corporations that is or are now, or shall hereafter be, engaged in such business shall have the right of eminent domain for the laying of pipe lines for the transportation and distribution of natural gas." Then follow provisions regulating the exercise of the right and the proceedings for the assessment of the damages done thereby. These provisions are not limited in their application to corporations created under the act, but are general, and apply to all "corporations that is or are now" engaged in the business, as well as those that "shall hereafter be engaged" in it. Thus corporations then supplying gas and those to be so engaged by virtue of incorporation under the act are treated in the same manner. This is in harmony with the circumstances that gave rise to the legislation of 1885, as well as with the general character of its provisions. The business of producing and supplying natural gas had assumed important proportions prior to 1885. Several companies, organized under the general laws providing for the incorporation of illuminating gas companies, were engaged in the business. This court had recently held that such charters contained no authority to transport or to deal in natural gas as a fuel. The precise point in controversy was the authority of a company so organized to exercise the right of eminent domain. In view of this state of things the Legislature, in 1885, declared that the production and distribution of natural gas had become, and then was a matter of "prime necessity;" that the business was so important as to justify declaring it "a public use;" and that it had become essential that corporations for this purpose "should be provided for by general law." It then conferred by apt words the right of eminent domain on all corporations then engaged or thereafter to be engaged in the business, and prescribed the manner in which the assessment of damages should be made and the amount thereof finally adjusted. Whatever the situation of the plaintiff may have been under the act of incor-

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poration, he now has an ample remedy for the recovery of his damages under the general system provided by the act of 1885.

This conclusion renders it unnecessary to enter at any length upon a discussion of the constitutional question raised over the title to the act of 1871. If it should be conceded, as the plaintiff in error contends, that the title does not sufficiently indicate a purpose to confer the right of eminent domain, or that it is misleading so far as this subject it concerned, such concession could not affect the decision of this case. Its only result would be to render so much of the act as the title gave no notice of unconstitutional. This was distinctly ruled in the Union Passenger Railway Company's Appeal, 32 P. F. Smith, 91, and in the Allegheny County Home's Appeal, 77 Penna. St., 77. The balance of the act would be unaffected. The corporation would remain with the general powers with which it was endowed; and as it was actually engaged in the transportation of natural gas when the act of 1885 became a law, it would acquire under its provision both the right of eminent domain and the system for adjusting the damages done by its exercise. But, speaking for myself, I would hold the title to the act of 1871 to be neither insufficient nor misleading. It is in these words: "An act to incorporate the Empire Contract Company, and define the powers thereof." All persons interested in knowing what contracts the company may make or what powers it possesses have notice from the title that both these subjects are covered by the act which follows. This is a sufficient compliance with the constitutional provision. It is only necessary the title should fairly give notice of the subject of the act, so as reasonably to lead to an inquiry into its body. Allegheny County Home's Appeal, *supra;* Craig v. Church, 88 Penna. St., 42; Loewi v. Haedrich, 37 Legal Intell., 26. It is not necessary that the title should be a complete index of its contents. Commonwealth v. Greene, 58 Pa. St., 226.

Our conclusions on the whole case may be summarized as follows:

The special law incorporating the defendant company, while it may be improvident in some of its provisions, is nevertheless valid.

The grant of power therein is sufficiently comprehensive to authorize the company to engage in the production, distribution, and supply of natural gas as a fuel.

It possessed the right of eminent domain under the provisions of its charter.

If this is doubtful, it acquired it under the act of 1885 beyond doubt.

The general system for the assessment of damages provided by the act of 1885 is applicable to companies engaged in the transportation of natural gas at and before its passage as well as to those organized for that purpose under its provisions.

Another and a graver question is suggested by this discussion, but it is not involved in this case. The policy of the State is to commit the development and prosecution of different enterprises to different classes of corporations. One furnishes a city with a water, another with light, and a third with heat. One carries packages, another transmits messages, and so on through the numerous manufacturing, mining, commercial and financial agencies which the business of this age brings into its service. The question which we have is not whether a single corporation organized under an "omnibus charter," like that of the Philadelphia Company, may be permitted to gather up into one corporate hand all the powers and franchises of the Commonwealth, but whether the company may do this particular business in which it has embarked its capital. We hold that it may; that the powers granted by the act of incorporation authorized it to engage in this business and to become a natural-gas company. The other subject is referred to only that we may, in the language of the old pleaders, "exclude the conclusion" that it is in the least degree involved in or affected by the decision of this case.

The appeal is dismissed at the costs of the appellant.

Public Resolution No. 19.

Joint resolution extending the provisions of an act entitled "An act relating to arrears of taxes in the District of Columbia," approved March 3, 1887.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress entitled "An act relating to arrears of taxes in the District of Columbia," approved March 3, 1887, be, and the same hereby are, extended so as to apply to all general taxes in arrear on the 1st day of July, 1886, and to all special assessments due the District of Columbia, and which may be paid on or before the 1st day of November, 1888.

Approved June 25, 1888.

Book Notice.

Federal Decisions. Cases Argued and Determined in the Supreme, Circuit, and District Courts of the United States. Arranged by William G. Myer. Volume 24. The Gilbert Book Company, St. Louis, Mo., Publishers.

This volume contains the following titles: Name, Notary, Notice, Officer, Partnership, Payment, Penalties, Pleading, and Post-Office. Mr. Myer announces that the series of twenty-nine volumes and index will be completed January 1, 1889. Volumes 28, 27, and 29 will be issued at intervals of five or six weeks in the order named, leaving volume 26 (Practice) to issue last.

"DID he resist?" arrest, asks the Lewiston (Me.) *Journal* in telling the following: A Maine sheriff, who was rather undersized, was given a writ of arrest against an Aroostook farmer. Having found the owner of the farm in the field, he explained his business, when he was requested to read his writ, which commenced as usual: "You are hereby commanded without delay to take the body of," &c. "All right," says the prisoner, stretching himself back on the grass, "I'm ready." "Oh, but you don't expect me to carry you?" "Certainly; you must take my body, you know!" "Will you wait until I bring a team?" "Can't promise. I may recover from my fatigue by that time." "Well, what must I do?" "You must do your duty." And there he lay immovable until the sheriff left, when he left also.

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A MOVEMENT having for its object the promotion of uniformity in the laws of the several States upon a number of subjects of general concern to all the people of the country, without regard to State lines, has been set on foot in New York. A bill has been introduced in the New York Legislature providing for the appointment of a commission charged with the task of ascertaining the best means to effect an assimilation and uniformity in the laws of the States in reference to marriage and divorce, insolvency, the form of notarial certificates, and other subjects. Among other things the commission will consider the advisability of the State authorities issuing an invitation to the other States to send representatives to a convention to deal with the subject. The members of the commission are to serve without pay. The bringing forward of this measure is a gratifying indication that there is a growing recognition of the desirability of a greater degree of uniformity than yet marks our legislation on several important subjects. It may be taken for granted, we suppose, that, if appointed, the commission, though charged mainly with the consideration of means of securing concurrent State action, will not neglect to consider the question to what extent action by Congress may properly be employed to further the uniformity desired. Some of the subjects upon which uniform legislation is most urgently needed, such as insolvency and the law relating to commercial paper, so far as the same is involved in interstate commerce, seem to fall peculiarly within its province.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

June 25.

11223. James J. Shryock, v. Hugh Tuohy et al. Creditor's bill. Com. sol., Frank W. Hackett.

11224. C. C. McKenney et al. v. Robert V. McKenney et al. Com. sols., E. A. Newman and J. J. Johnson.

11225. The Washington Beneficial Endownment Association v. Sarah Crowther et al. Interpleader. Com. sol., I. L. Johnson.

June 26.

11226. Horace S. Cummings et al. v. William H. Barnum. For specific performance. Com. sol., F. H. Mackey.

11227. Apollo Zanichelli, upon petition of Mary, his wife. To appoint a committee.

June 27.

11228. Laura Bellew v. William R. Bellew. For divorce. Com. sol., S. C. Mills.

11229. Catherine O'Neal v. Thomas O'Neal. For divorce. Com. sol., S. C. Mills.

11230. J. H. Johnson v. Richard Rich et al. To enjoin infringement of patent. Com. sol., S. T. Thomas.

June 28.

11231. Thomas Somerville v. Thomas M. Carpenter et al. Judgment creditor's bill. Com. sols, Riddle, Davis & Padgett.

CIRCUIT COURT.—New Suits at Law.

June 25.

28782. Samuel Besinger v. Joseph H. Minnich. Replevin. Piffs atty, C. A. Walter.

28783. Thomas H. Carter et al. v. Elmira Smith. Ejectment. Piffs atty, H. B. Moulton.

28784. James W. Searle v. Alexander Davidson. Replevin. Piffs atty, John A. Clarke.

28785. Maria C. Rudder v. Philip Wallach. Replevin. Piffs atty, J. H. Ralston.

June 28.

28786. Francis X. Ganter v. Morris Goldstein et al. Note, $150.57. Piffs attys, Garnett & Mackall.

28787. Hannah Henderson v. The District of Columbia, Damages, $10,000.

28788. George I. Hill v. Cabel C. Merritt et al. Note, $160. June 29.

28789. Crane, Parris & Co. v. Presbry & Green et al. Note. $125. Piffs atty, J. B. Larner.

June 30.

28790. Mary J. Sypher v. Albert A. Wilson, United States marshal for the District of Columbia. Replevin. Piffs atty, W. Steever.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
June 29th, 1888.

In the matter of the Estate of Mary A. Taylor, late of the city of Washington, District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Orlando B. Willcox, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
27 Test: DORSEY CLAGETT, Register of Wills.

THIS IS TO GIVE NOTICE.

That the subscriber has obtained from the Orphans' Court of Baltimore City Letters of Administration on the estate of William S. Whiteley, junior, late of said city, deceased.

All persons having claims against said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of said estate. All persons indebted to said estate are requested to make immediate payment.

Given under my hand this 27th day of June, 1888.
27 J. HOLMES WHITELEY, Adm'r.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Joseph E. Johnston. v. Henry B. McLane et al. } Equity No. 10923.

The Trustee in above cause having reported the sale of the real estate in the proceedings named, to wit, lot numbered thirty-three (33) in Shepherd and Kirby's recorded subdivision of square numbered one hundred and sixty-four (164), as recorded in Surveyor's Liber J. H. K., page 137, at and for the sum of twelve thousand one hundred ($12,100) dollars, it is, this twenty-ninth day of June, A. D. 1888, ordered and decreed by the Court that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the thirtieth day of July, A. D. 1888.

Provided that a copy of the above order be published in the Washington Law Reporter once a week for three successive weeks before said 30th day of July, A. D. 1888.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
27 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 2d day of July, 1888.

Sarah Ann Lockwood. v. Agnes Bolden Place et al. } No. 11134. Docket 28.

Upon hearing of the Trustees' report filed herein, it is, this 2d day of July, A. D. 1888, ordered that the sale herein reported be, and it hereby is, ratified and confirmed, unless cause thereof to the contrary be shown on or before the 1st day of August, A. D. 1888.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
27 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas A. Newman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1888.

T. ALBERT NEWMAN, Ex'r, 3136 Bridge st.

27 No. 3092. Ad. D. 14. J. J. Waters, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Virginia Burnett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1888.

LOUISE M. KERTH, Adm'x,
Berleith, Georgetown Heights.

27 No. 3134. Ad. D. 14. George Earle, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lavinia Black**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1888.

ROBERT P. YEATMAN, Ex'r, 1013 4½ st. s. w.

27 No. 3133. Ad. D. 14. J. J. Darlington, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **John Deuringer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1888.

PAUL O. BACHSCHMID, Adm'r c. t. a., 620 S st. n. w.

27 No. 3051. Ad. D. 14. Kennedy & Shellabarger, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Catherine Wilson, Guardian,
v.
Catherine Miller, otherwise known as and called Daisy Miller et al. } No. 11073. Equity.

Edward A. Newman, the Trustee appointed herein, having reported the sales of the following described real estate situate in the city of Washington and District of Columbia, to wit, lot numbered 36 in the recorded subdivision of original lots 15, 16, 17, 18, and 19, in square numbered 204, fronting 20 feet on the west side of 14th street west, between U and V streets north, and running back 138 feet 6 inches to an alley, unimproved, containing 2,770 square feet, at and for the sum of one dollar and fifty-two cents per square foot, amounting to $4,210.40, to Richard T. Pettit, and all that part of lot numbered 16, in square numbered 551, situate in said city and District, beginning for said part at the northeastern corner of said lot and running thence south 130 feet, thence west 16 feet 4½ inches, thence north 130 feet, thence east 16 feet 4½ inches to the beginning, improved by a two-story frame house, to Charles F. F. Rosenthal, at and for the sum of $1,325.00, it is, therefore this 29th day of June, 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

The said sales aggregate $5,535.40.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
27 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 26th, 1888.

In the case of Charles H. Trunnel, Executor of **Catharine Heiss or Hess**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 20th day of July, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

27 No. 2773. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity.

June 27, 1888.

Zachariah Coleman
v.
Abraham Gibson. } 10949. Eq. Doc. 27.

Walter B. Williams, Trustee, having reported to the Court the sale of sub-lot 53, in J. W. Jones' subdivision of square 545, as the same is recorded in Liber N-K., folio 267, of the records of the Surveyor's office of the District of Columbia, under the terms of sale as set forth under a decree rendered in this suit on the 23d of March, 1888, and it further appearing from said report that Charles Ford became the purchaser of said property, at public auction, for the sum of $690.00, it is, by the Court, this 27th day of June, ordered and decreed that the said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 27th day of July, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
26 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of June, 1888.

Annie Miller
v.
Daniel Miller. } No. 11048. Eq. Docket 28.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **Daniel Miller**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce "a vinculo matrimonii" upon the ground of willful and uninterrupted desertion for over three years.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.
25 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Robert E. Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of June, 1888.

CARLOTTA M. MOORE, Adm'x c. t. a.,
734 5th st. n. w.

25 No. 3073. Ad. D. 14. Wm. F. Mattingly, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

Mary Berry
v.
Franklin Berry. } No. 11151. Eq. Docket 28.

On motion of the plaintiff, by Mr. B. F. Leighton, her solicitor, it is ordered that the defendant, **Franklin Berry**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant on the grounds of cruelty and desertion.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.
24 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Arianna J. Lyles**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of May, 1888.

ELEANOR A. MAGRUDER,
ARIANNA E. WARD,
Executrices.

26 No. 3019. Ad. D. 14. J. J. Waters, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary S. Naylor
v.
Henry Naylor et al. } In Equity. No. 9327. Doc. 24.

It is, this 26th day of June, A. D. 1888, ordered that the sale reported by the Trustees in the above-entitled cause, in their report this day filed, be, and the same are severally hereby, ratified and confirmed, unless cause to the contrary be shown on or before July 26th, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said date last mentioned.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
26 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James E. Young
v.
Cecelia F. Young et al. } No. 10769. In Equity.

James S. Edwards and Westel Willoughby, the Trustees appointed herein to make sales of the real estate and premises in this cause decreed to be sold, having reported that they have made sales of all of said real estate and premises, which sales are particularly and in detail set forth in said report, it is, this 21st day of June, A. D. 1888, ordered, adjudged, and decreed that said sales will be approved and confirmed on Monday, the 23d day of July next, unless cause to the contrary be shown before that day.

Provided a copy of this order be published once a week for three successive weeks before said last-mentioned day in the Washington Law Reporter, printed and published in the city of Washington, District of Columbia.

The report states that the aggregate of the sales amounts to the sum of seventeen thousand four hundred and thirty-four dollars and sixty cents ($17,434.60).

CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.
26 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 22d, 1888.

In the case of Cecelia F. Young, Administratrix of **Robert W. Young**, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
26 No. 2696. Ad. D. 13. Edwards & Barnard, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Henery**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of June, 1888.

SARAH HENERY, Ex'x, 465 F st. s. w.
26 No. 3078. Ad. D. 14. Edwards & Barnard, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 22d, 1888.

In the matter of the Estate of **Peter McIntyre**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Sister Beatrice, of Providence Hospital.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 2 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
26 C. C. Lancaster, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Wilhelm Mueller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of June, 1888.

CHARLES MUELLER, Adm'r c. t. a., 3029 M st. n. w.
26 No. 3114. Ad. D. 14. W. K. Duhamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 22d, 1888.

In the matter of the Estate of **John Farrell**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Frank Hume, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
26 S. T. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of June, 1888.

William H. H. Gorham
v.
Henry H. Dudley, jr., et al. } No. 11079. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. J. Darlington, his solicitor, it is ordered that the defendant, Henry H. Dudley, jr., cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to substitute a trustee to release sublot 54, sq. 361, in the city of Washington, D. C., from a deed of trust, recorded in liber No. 850, fol. 415, to Henry A. Duncanson and Henry H. Dudley, trustees, both deceased, on ground that the indebtedness secured has been paid.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
24 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Lucretia Myers et al.
v.
John J. Lindsley et al. } Equity 10999.

It is, this 12th day of June, A. D. 1888, ordered that the sales made and reported by George E. Hamilton and J. Holdsworth Gordon, Trustees in above cause, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 12th day of July, A. D. 1888.

Provided a copy of this order be in inserted in the Washington Law Reporter once a week for three weeks before said day.

The report states the amount of sales to be $86,790.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
25 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Hiram S. Litchfield**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of May, 1888.

JAS. T. PETTY, Ex'r, 633 Virginia ave. s. w.

25 No. 3095. Ad. D. 14. O. T. Thompson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

Perry Matthews et al. v. **Emeline Williams et al.** } Eq. No. 10664.

Julius Maedel, the Trustee appointed by the decree of court in this cause to sell the property involved therein, being the south 100 feet of lot 43 of S. S. Loomis' recorded subdivision of lots in square 69, in the city of Washington, D. C., having reported that he has sold the said property to Thomas M. Burt, at private sale, for the sum of eleven hundred and twenty dollars and twenty cents ($1,120.20), and subject to all taxes and the claim of Wm. L. Bramhall's interest in said property, and that the purchaser has complied with the terms of sale, it is, this 14th day of June, A. D. 1888, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

A true copy. Test: R. J. MEIGS, Clerk.

26 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William Myers**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of June, 1888.

CALDERON CARLISLE, Ex'r, Fendall Building.

25 No. 3090. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Emma C. Wright**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of June, 1888.

C. W. HOLCOMB, Ex'r,
629 F st. n. w., Washington, D. C.

25 No. 3125. Ad. D. 14. E. A. Newman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 19th, 1888.

In the case of Randall Hagner, Administrator c. t. a. of **Robert P. Dodge**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 13th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

25 No. 2748. Ad. D. 13.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Henry Boegeholz**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of June, 1888.

CHARLOTTE BOEGEHOLZ, Adm'x, 1139 7th st. n. w.

25 No. 3121. Ad. D. 14. Chapin Brown, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lucy L. Hunter**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of June, 1888.

MARY ANN McCLAIN, Ex'x,
1799 Pa. ave., Washington.

25 C. A. Brandenburg, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mabel Howell et al. v. **Samuel G. Muir.** } In Equity. 10717.

It is, by the Court, this 12th day of June, A. D. 1888, ordered that the offer to purchase the real estate in said case mentioned, made by Alfred Richards, and reported by L. Cabell Williamson, Trustee, be, and the same is hereby, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of July, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 13th day of July, A. D. 1888.

The report states the amount offered to be $2,600.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

24 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 14th, 1888.

In the case of Anthony Lulley, Administrator of **Emilie Lulley**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

25 No. 2706. Ad. D. 13. A. B. Duvall, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of June, 1888.

J. Stanley Brown et al. v. **Harriet Abbot.** } No. 11136. Eq. Docket No. 28.

On motion of the plaintiffs, by Mr. J. H. Ralston, their solicitor, it is ordered that the defendant, **Harriet Abbot**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to declare deed to Harriet Abbot, recorded in liber 1253, folio 303, &c., of the land records of the District of Columbia, a cloud upon title to so much of lot 29, S. P. Brown's subdivision of Mt. Pleasant as is claimed by plaintiffs herein and specifically described in bill of complainant herein, and for injunction, &c.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

24 By M. A. CLANCY, Ass't Clerk.

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WASHINGTON, D. C. - - - - - JULY 11, 1888

The British Matron in Court.

There is, perhaps, no more ridiculous spectacle in the world than the British public in one of its periodical fits of raging, rampant morality; and of all the ridiculous figures which help to make up the absurd whole, none are so irresistibly comic as the virtuous British matron. Not that we would, for one moment, deny that British matrons, as a rule, are virtuous even to the extent of prudery, nor would we yield place to any one in recognizing the fact that in the virtue of the women of England its surest safeguard and its brightest jewel are to be found. But every now and then events occur which compel us to ask how far this virtue is real, and how far it is assumed; how much of it is an innate instinct, how much of it a thin social veneer. It might, perhaps, be well if Englishwomen were a little less aggressive in their virtue and a little more consistent in their modesty. There are plenty of women who would go into hysterics over an Etty, would see nothing but the nakedness of Ingress' "La Source," and would enshroud the Venus di Medici in a thick tweed ulster, but who would yet see no evil in rushing to a court of law when any case of a peculiar nastiness is in progress, and wallowing in nauseating details, which even the men whose duty it is to investigate them, touch, as it were, with gloved hand.

It is sometimes useless for a barrister or a judge to throw out a delicate insinuation that it would be well for ladies to leave the court at a certain stage of the proceedings. Such consideration for the tender susceptibilities of the gentler sex are entirely thrown away, and only serve as a *sauce piquante* to whet their appetite for the coming unsavory dish, and to create an obstinate determination not to lose one word of what is coming, but to stick to their coigns of vantage to the bitter end, unless dislodged by something more practical than mere moral force.

An instance of this unpleasant side of the British matron's character as displayed in the Law Courts, has just occurred at the Glamorganshire Assizes, where some of the cases were of a very malodorous kind. Some of the details were of such a shocking nature that all ladies were promptly ordered to leave the court. One would imagine that they would have obeyed the mandate with alacrity, but the reverse was the case. Here was the forbidden fruit, and, notwithstanding the disaster which attended the first of their sex, they are still anxious to pluck it, and probably will be until the race has run its course. However, after a time they were unceremoniously ejected. But trust a woman to be beaten even though the brightest wit at the bar be pitted against her. They were determined to hear the disgusting evidence, and hear it they would. Those who are acquainted with the Cardiff Town Hall know that above the court in question there is a corridor, and this has windows, which not only supply light to the chamber underneath but afford means of ventilation, and these had been opened by order of Mr. Justice Stephen. Now was the fair ones' chance, and they soon defeated the ends of justice. Up the stairs they stole, and listened to the whole affair.

What can possibly be said in extenuation of such an exhibition of unwomanliness? There is a story told that, some years ago, a judge intimated his desire that all ladies should leave the court; but, although there was a pretty general movement, some bonnets were still visible here and there. Whereupon, when the usher called attention to the fact, his lordship remarked, in a very audible voice, looking at the lingerers as he spoke, "I think all *ladies have* left the court." The judicial satire was not without effect. But now-a-days the woman of the period is so much more self-assertive that it requires far more stringent treatment to cure her of her unhealthy taste for garbage.

It is not our business to comment too stringently on the immodesty, which is a sign of the times with Englishwomen of all classes in other places than our courts of law. That the brutal coarseness of Zola, the sensuality of Gautier, the sensuous perverted naturalism of Daudet and Gustave Flaubert, should find readers in English boudoirs, is lamentable enough; and that English ladies should be found aspiring to eclipse the fascinations of the "Gaiety" chorus may be a novel sensation for society, but is by no means a departure to be too freely encouraged.

But a struggle for seats at a nasty or sensational trial is, above all else, offensive and distasteful. So far as the members of the legal profession employed in the case are concerned, there need be no squeamishness on their part. They have their duty to perform, and must do it. It is no concern of theirs that its performance may involve disclosures unfit for ears feminine—polite or vulgar—the women should not be there. But it is very desirable that a healthier public opinion should be formed upon the whole question, and that the British matron should be made to understand that she loses moral, if not social caste, by haunting the law courts in quest of morbid sensationalism.

There can be few spectacles more completely calculated to debase men's idea of the grace and tenderness of the feminine character than to see women clustering thickly upon the benches of the Divorce Court, drinking in, with an insatiable thirst, the horrible details of some abominable case. Nor is it edifying to witness these same ladies scanning a wretched criminal in the dock with eye-glass or with opera-glass, revelling in every change of posture or expression which may indicate the workings of a prisoner's mind or conscience. The dames of old Rome, turning down their thumbs with a pitiless verdict for the wounded gladiators, were not more unwomanly, more brutally cruel, than the modern women of fashion who gloat over the mental agony of a miserable man or woman whose life may be hanging upon a thread. A great deal has been said and written upon the subject from time to time, and, perhaps, by

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pointing out over and over again how distasteful it is to the legal profession, as well as demoralizing and degrading to the women who practise it, and, above all, how it tends to lower the reputation of Englishwomen for modesty and for tender sympathy in the estimation of all men worthy of the name, we may some day find that ladies will no longer have to be requested to leave the court, for the simple reason that none will be drawn there by an unwholesome craving for sensation. In the meantime, until such a desirable condition of things is attained, it is to be hoped that the garbage-hunters will be removed by gentle force if courteous persuasion is of no avail, and, further, that we shall not again have to record so gross a breach of good taste as that recently exhibited by the Cardiff women at the Glamorganshire Assizes.—*Pump Court.*

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

ERMANCE DE ST. ROMES, APPELLANT, v. THE LEVEE STEAM COTTON PRESS COMPANY.

Decided May 14, 1888.

1. Where, before final judgment, the plaintiff wished to have her bill dismissed by reason of having parted with her interest to her son, but was refused by the court under article 901 of the Louisiana Code of Practice, and judgment was entered against her. Such judgment is not *res judicata* to bar an action brought by the son on the same matter, when her interest had actually been parted with.
2. The dismissal of a suit for want of parties does not render the subject of controversy *res judicata*.
3. If a corporation has, by negligence, cancelled a person's stock and issued certificates therefor to a third party who has purchased it from one not authorized to sell it the true owner is not bound to pursue such purchaser, but may directly call upon the corporation to do him right and justice by replacing the stock or paying him for its value.
4. The defense of prescription under the Louisiana Code considered and rejected in this case.

Mr. Justice BRADLEY delivered the opinion of the Court.

This is a suit in equity instituted in the court below on the 9th of December, 1882, by the appellant, as heir of her mother and brothers, against the appellee, to compel the latter to issue to the appellant a certificate for sixty-six shares of its capital stock, which are charged to have been unlawfully cancelled and transferred to other parties without authority; and to recover the dividends on said stock since the year 1853. The bill states that in 1845 the complainant's mother, widow de St. Romes, became the owner of said sixty-six shares of stock, and received two certificates therefor, one for forty-three shares and the other for twenty-three shares; but that on the 29th of July, 1853, the defendant, without authority from the widow de St. Romes, by mistake and in fraud of her rights, cancelled said certificates, and have ever since refused to recognize her, her heirs or assigns, as the owners thereof; that in 1861 Madame de St. Romes sued the company for the dividends accruing on said stock, and, by judgment rendered in June, 1868, recovered the dividends for 1848, 1849, 1852 and 1853; that in April, 1876, the present complainant, as owner of said shares, instituted a suit in the Superior District Court of New Orleans against the appellee, which was ended by a non-suit in 1882. The bill then states the amount of dividends declared by the defendant since 1853, and prays relief as above stated.

The defendant, in its answer, admits that the widow de St. Romes was owner of stock from 1845 to 1853; but that she transferred the same through her agent on the 29th of July, 1853, and has never owned them since; that her agent was Pierre Deverges, who acted as her attorney in fact in the management of her business for many years, being held out by her to the community as such, with power to dispose of her property; that the stock in question was sold by Deverges, as the widow's agent and attorney in fact, to one Cohen on the day mentioned, and transferred to him on the books of the company; and from that time Cohen and those claiming under him have been in possession of said stock, with right to all dividends; that to effect the sale of the stock the widow de St. Romes delivered her certificates of stock to her said agent, and he surrendered them to the defendant, and new certificates were issued to the purchaser. The answer further states that the books and papers of the defendant were destroyed by fire in 1859, and that its secretary, who superintended the transfers of its stock, and Deverges, have both been dead many years, and that the widow never assumed to assert any claim to the stock, until the suit brought by her in 1861; it states that Cohen sold the sixty-six shares to Peschier & Forstall, who sold them to A. & M. Heine, who transferred them to one H. Gally, the present owner, and that these persons have successively owned and possessed said stock in good faith, by just title, and received the dividends thereon to the present time. The answer sets up the prescription of three years and of ten years. It further states that in 1871 the widow de St. Romes instituted suit in the Superior District Court of the Parish of New Orleans against the defendant and the then owners of the stock, holding under said sale to Cohen, and claimed said stock and the dividends which accrued after 1854, which suit was finally decided by the Supreme Court of Louisiana in March, 1879; and, although the widow attempted, before the decision was announced, to withdraw the suit (then on appeal) on the pretense of an assignment of her interest therein to her son Eugene, in November, 1867, the court, under article 901 of the Code of Practice, refused to dismiss the case on that account, and gave judgment against the said widow de St. Romes on the ground of prescription. The answer sets up this judgment as *res judicata* in defense to the present suit. The answer further states that in April, 1876, the present complainant instituted suit against the defendant in the Superior Court for the Parish of New Orleans, claiming the shares and dividends now sued for; which suit was finally dismissed for want of proper parties; the answer claims that this decision also makes the case *res judicata*, and precludes the complainant from a recovery in this suit. Some further supplemental pleadings

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were filed in the case, but they need not be stated here.

The material questions are: First, Whether the matter in controversy is *res judicata;* secondly, Whether the suit is defective for want of proper parties; thirdly, Whether the claim is prescribed; and, fourthly, If none of these defences can be maintained, whether the stock was transferred by authority of Madame de St. Romes.

The first question requires us to direct our attention to the suits that were brought against the defendant in relation to the stock and its dividends. The first suit was commenced in January, 1861, and terminated by the judgment of the Supreme Court of Louisiana in January, 1868. It was brought by Madame de St. Romes against the defendant to recover the dividends for the years 1848, 1849, 1852 and 1853, and to be recognized as holder and owner of the stock since 1853 and entitled to all dividends declared thereon since that time, with judgment for the same; or, in default of payment of said dividends, judgment for the value of the shares and interest thereon from 1853. The court gave judgment in the plaintiff's favor for the dividends of 1848, 1849, 1852 and 1853, which accrued before the transfer of the stock, not being satisfied of Deverges' authority to collect them; but as the alleged transferree of the stock was not a party to the suit, it was held that the plaintiff could not be justly recognized as owner of the stock in question; nevertheless her right to claim it in a direct action was reserved.

It is clear that nothing was determined in this action with regard to the validity of the sale and transfer of the stock. Near the close of the proceedings, on the 23d of November, 1867, Madame de St. Romes executed a transfer to her son, Eugene de St. Romes, of all her interest in the case then pending, and subrogated him to all her rights, claims and demands that might result against said company. On June 9, 1868, this transfer was filed of record in the cause, and the money recovered in the suit was ordered to be paid to Eugene de St. Romes.

On the 20th of June, 1871, the widow de St. Romes commenced a new action against the defendant, praying that she might be recognized as the owner of the stock; that the cancelling of the certificates might be declared void and the transfer void, and that the defendant, the Levee Cotton Press Company, be ordered to pay her all the dividends which had accrued on the stock since 1853, with legal interest. In pursuance of the decision of the court in the previous case she made the then holders of the stock parties defendant.

During the progress of this suit in May, 1874, Eugene de St. Romes died intestate, leaving as his sole heirs his mother, his brother, Victor, and the present plaintiff, Ermance de St. Romes. In August, 1874 Victor also died, intestate, leaving as his sole heirs his mother and his sister, Ermance. On the 21st of October, 1874, the widow de St. Romes, the mother, renounced the succession of her sons in favor of her daughter, Ermance.

The suit still went on in the name of the widow, and in November, 1874, the Superior District Court dismissed the plaintiff's demand, on the ground that it was prescribed. The widow appealed, and the Supreme Court affirmed the judgment. Quoting the civil code, the court said: "Shares or interests in banks and other companies of commerce or industry are considered as movables (C. C., 466). Three years in good faith, except where the thing was let or stolen, gives a prescriptive title to movables (C. C., 3472). Ten years without title or good faith (C. C., 3475). The defendants possessed under a title and personally in good faith for eighteen years before this suit was brought."

Before this judgment was rendered the plaintiff wished to dismiss the bill by reason of having parted with her interest to her son Eugene; but, under article 901 of the Code of Practice, the court refused to dismiss it. Still, as she had actually parted with her interest, the decision is not binding on her transferee or his heirs. So that this judgment also fails to make the present case *res judicata.* The decision of the court, however, is instructive in relation to the law of Louisiana, and may assist us in the further consideration of the case.

Whilst this suit was in progress, on the 1st of April, 1876, the present complainant, Ermance de St. Romes, commenced a suit against the defendant in the Superior District Court to recover the dividends on the sixty-six shares of stock which accured after the year 1853 down to the commencement of the suit. She based her claim on the allegation that she was the owner of the said shares of stock by inheritance from her brother, Eugene, who was transferee of her mother, &c. The Supreme Court, on appeal, dismissed the action for want of proper parties, holding that the persons having possession and claiming to be the owners of the stock should be made parties, because their adverse right could not be disposed of in a suit in which they were not parties; that the groundwork of the plaintiff's action was the ownership of the stock; that if she was not owner of the stock she could not claim the dividends; that the examination of the ownership in the absence of those to whom the stock had been transferred, and who were in possession of it, and had regularly received the dividends, would be barren of any practical result. This judgment was rendered in 1882. But a dismissal of a suit for want of parties does not render the subject of controversy *res judicata.* It leaves the merits unconsidered and undisposed of. We are of opinion that the defence of *res judicata* cannot be sustained.

In the same year (1882) in which the last judgment was rendered by the Supreme Court of Louisiana, the complainant filed her bill in the present suit, again without making the owners of the stock parties. She founds her claim, as in the former suit, upon her ownership of the stock, alleging that neither her mother nor her brothers ever authorized the transfer of it, and that the cancellation of the certificates was done by mistake, and was a fraud against the widow de St. Romes.

If the Supreme Court of Louisiana was right in dismissing the suit for want of proper parties, the present suit is obnoxious to the same objection. True, it has been developed in the pleadings, that the stock had been so often transferred and had become so blended with other stock, that it could not now be identified, and the present owners could not be ascertained.

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But is not that a result of the long delay of the complainant and those from whom she derived her interest? The present suit was not commenced until nearly thirty years after the transfer of the stock by Deverges, as attorney in fact of Madam de St. Romes. Even if prescription has been sufficiently interrupted to give the complainant a *locus standi* in court, notwithstanding the lapse of time, she may nevertheless be subject to other disadvantages resulting therefrom which cannot be cured.

But was the Louisiana Court right in its conclusion as to necessary parties? If a corporation has by negligence cancelled a person's stock, and issued certificates therefor to a third party who has purchased it from one not authorized to sell it, is the true owner bound to pursue such purchaser, or may he directly call upon the corporation to do him right and justice by replacing his stock, or paying him for its value? The weight of authority would seem to be in favor of the latter alternative. (See Tel. Co. v. Davenport, 97 U. S., 369; Loring v. Salisbury Mills, 125 Mass. 138; Pratt v. Tauton Copper Co., 123 Mass. 110; Penn. R. R. Co.'s Appeal, 86 Pa. St., 80; Loring v. True, 104 U. S. 223; Salisbury Mills v. Townsend & al., 109 Mass., 115.)

Then will the plea of prescription avail the defendant? The Supreme Court of Louisiana decided in the second suit brought by the widow (31 Ann. 224, 229), that three years' possession in good faith of a movable (which corporate stock is declared to be, Civil Code, 474 (466),) is sufficient to give good title. (C. C. 3506 (3472).) But that decision was based on the theory that the owner was bound to pursue her stock against those who had obtainted possession of it, and in obedience to that view she had made them parties; and it was in reference to such persons that the prescription of three years was allowed. It could not apply to the defendant, because the defendant never had possession of the stock. It was answerable for carelessly and negligently allowing the transferees to obtain possession of it. It follows that the corporation cannot rely on the prescription of three years; but only on the prescription of one year, which is applicable to the commission of offences and *quasi* offences (and which was not pleaded); or on that of ten years, which is applicable to personal actions generally. (Civ. Code, 3536 (3501), 3541 (3508).) In Case v. Citizens' Bank, (100 U. S. 446), which was a suit to recover damages for refusal on the part of the Crescent City Bank to permit a transfer of shares on its books, Mr. Justice Clifford, delivering the opinion of the court, cited a number of Louisiana authorities, to show that in such a case as that the prescription of one year did not apply, but that the prescription of ten years did. The present case seems to belong to the same category. One of the cases referred to by Justice Clifford was that of Percy v. White, (7 Rob., 513.) which was a suit of stockholders against the directors of a bank for damages and losses sustained through their negligence, fraud and mismanagement of the affairs of the bank. The Supreme Court of Louisiana held this to be an action for damages *ex contractu* against mandataries or agents. We have looked into the Louisiana reports to some extent and have not been able to find any decisions contrary to the general tenor of those on which this court relied in Case v. The Citizens' Bank.

If, therefore, the defendant can only plead prescription of ten years, the question remains, whether it is available in this case; and it would seem to be clear that it is not. For though the transfer complained of took place in 1853, the widow de St. Romes brought her action in 1861, after the lapse of only eight years; and it was not terminated until 1868. The complainant commenced her action in the State Court in 1876, after an interval of only eight years, and this action was not terminated until 1882. The present action was commenced in the same year. So that there has never been an uninterrupted period of ten years in which prescription could run. It follows that the defence of prescription fails. (Civil Code, art. 3518, (3484); Riviere v. Spencer, 2 Martin, 79, 83; Badon v. Bahan, 4 Ann., 467, 470; Turner et al. v. McMain et al., 29 Ann., 298, 300.)

The defendant's counsel, feeling no doubt the uncertainty of the defences referred to, dwelt with much emphasis and ingenuity upon the presumptive proofs of the transfer of the stock being made by Deverges with the knowledge and authority of Madame de St. Romes. It is unnecessary to say more on this subject than that the proofs referred to fail to satisfy us that any authority was given, or that the transfer was acquiesed in. The Supeme Court of Louisiana entertained the same opinion in the case brought in 1861, and very clearly expressed it, although they made no decision on the subject in consequence of what they considered a want of proper parties.

The decree of the Circuit Court is reversed and the cause remanded with instructions to take further proceedings in conformity with this opinion.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

WILLIS WOOSTER ET AL., Trading as WOOSTER & ADAMS, v. ANTONE DEVOTE ET AL.

IN EQUITY NO. 9359. DOCKET NO. 24.

Decided May 7, 1888.

The CHIEF JUSTICE and JUSTICES COX and JAMES sitting.

1. Where one is indebted even in a small amount—*e. g.* $127—a voluntary conveyance of his property is fraudulent as to the existing creditors and will be set aside.
2. On setting aside such a conveyance, subsequent creditors, who have come in may have the benefit of the decree.

Appeal from a decree setting aside an alleged fraudulent conveyance.

The bill was filed by judgment creditors of the defendant, Antone Devote. It appeared that Devote, after part of the debt included in plaintiff's judgment was incurred, made a deed of his real estate to the defendant Sprigg, for the stated consideration of $10, and on the same day Sprigg deeded the property to the defendant, Anna M. Devote, wife of Antone Devote, for the same consideration.

Further facts are stated in the opinion.

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WILLIAM A. MCKENNEY for defendants, appellants.

Mere indebtedness on the part of a grantor at the time of making a conveyance is not sufficient to establish an intent to hinder, delay and defraud creditors. If the debtor has ample means left to pay the debts owing by him at the time of making the conveyance, then the conveyance is valid and will not be set aside as having been made in fraud of the rights of creditors. Bump. Fraud, Conv., 3d ed., p. 279; Lloyd v. Fulton, 91 U. S., 480; Jones v. Clifton, 101 U. S., 225.

Subsequent creditors who have trusted the debtor, after they have had notice that he had put his property out of his hands by a conveyance valid between him and his grantee, can never claim that the conveyance is void as to him on account of such indebtedness.

The record of the deed is notice to all the world. Kane v. Roberts, 40 Md., 590.

A deed fradulent and void as against the grantor's antecedent creditors is valid, if recorded, as against subsequent creditors where there is nothing in the deed itself, and no evidence to show any intent or design to defraud such creditors.

Fraud in fact must be shown. Kane v. Roberts, 40 Md., 590; Williams v. Banks, 11 Md., 250; Cooke v. Kell, 13 Md., 469; Moore v. Bondheim, 19 Md., 175; Wallace v. Penfield, 106 U. S., 260.

The settlement of lands by a man upon his wife is not invalid, if the rights of existing creditors are not thereby impaired. U. S. Trust Co. v. Sedgwick, 97 U. S., 304; Clark v. Killian, 103 U. S., 766.

"Whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him *in limine;* the court will refuse to interfere on his behalf, to acknowledge his right, or award him any remedy." Wilson v. Bird, 28 N. J. Eq., 352; Creath v. Sims, 46 U. S., 5 How., 192; Paine v. Lake Erie & L. R. Co., 31 Ind., 283; Bleakley's App., 66 Pa., 187.

J. T. CULL for plaintiffs, appellees.

The deeds are fraudulent and void, being a voluntary settlement by Antone Devote on his wife, Anna M. Devote, of all his property subject to execution, when he was indebted to Wooster & Adams, and rendered it impossible for them to make their debt. 13 Eliz., chap. 5; Sexton v. Wheaton, 21 U. S., 8 Wheat., 229; Kehr v. Smith, 87 U. S., 20 Wall., 31; Edwards v. Entwistle, 2 Mackey, 43: Worthington v. Bullitt, 3 Md. Ch., 99; Walter v. Lane, 1 Mac Arthur, 275.

The property left after the deeds were made was small in value, of a perishable nature, and exempted by law from execution. R. S. D. C., sec. 797.

Where a deed is set aside as to existing creditors, subsequent creditors are admitted to share the fund. Kehr v. Smith, Edwards v. Entwisle, and Walter v. Lane, *supra.*

Mr. Justice JAMES delivered the opinion of the court.

In the case of Wooster and others against Antone Devote and others, we are asked to set aside a conveyance made by Devote to his wife, on the ground of fraud against his creditors.

The facts appear to be that Devote had two pieces of real estate and a business in the market with a stock that was shifting from time to time being purchased day by day of wholesale provision dealers. He was occupying, on a monthly agreement, certain stalls, the original lease to which had expired. It appears that the real estate in question was all the property he had of any substantive character. He owed only $127 so far as shown to the court, at the time of the conveyance, but his only means of paying even such a small sum as that consisted of his business prospects.

It is perfectly well settled that if a man makes a voluntary conveyance of his property, relying upon his business prospects as a means of paying even small existing debts, the conveyance tends to hinder and delay his creditors. The business is not accounted a property sufficiently certain for his creditors, and of course it would not be so in case of his death. The case is accompanied by some acts on the part of Devote which indicate that it was a measure for protection in case his debts should trouble him. He had, in a very indefinite way, associated his son with him in his business, so that strangers had a right to regard the son as a partner, and it appears that the father was incapacitated by bad health from giving his personal attention to the business, so that the son was left with the power of making debts which might prove to be indiscreet and consequently troublesome.

In some conversation which the defendant had about this conveyance he disclosed the real object of it—that it was intended as a protection against the power of his son to waste this property. That contemplated the making of debts, and contemplated at the same time a protection of his property against those debts. We regret the result, as it looks like the struggle of a well meaning man, in bad health, to provide for his family against misfortunes which might overtake him. Nevertheless the fact remains that he has made such a disposition of his property as to hinder and delay the existing creditors, small as the sum due them was. More debts were contracted afterward; and although it may be said that these later creditors had the opportunity of learning from the record that he had conveyed his property and, therefore, may be said to have extended their credits in the face of the fact, yet it is well settled that such a deed must be set aside in behalf of the existing creditors and then the subsequent creditors who came in may have the benefit of the decree.

We are compelled, therefore, to affirm the decree below holding this conveyance to be fraudulent.

ON APPEAL from a judgment entered on the report of a referee, his findings will be regarded as conclusive. When a case has been tried in the circuit court by a referee without any waiver in writing of a trial by jury, exceptions taken to decisions of the referee cannot be reviewed on appeal.—Roberts v. Benjamin, U. S. S. C., Jan. 9, 1888; 8 S. C. Rep., 393.

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UNITED STATES COURT OF CLAIMS.

—

JONATHAN Q. BARTON
v.
THE UNITED STATES.

1. Where two statutes are not in express terms repugnant, yet if the latter covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for it, it will operate as a repeal of the first statute.
2. The act of August 5, 1882, ch. 391, 22 Stat. L., 287, was repealed by the act of March 3, 1883, ch. 97, 22 Stat. L., 473.
3. The act of March 3, 1883, has no reference to benefits derived from promotion to *different grades*, but is confined in its money benefits to *one grade*, the lowest grade having graduated pay; and that benefit can be nothing else than longevity pay on account of length of previous service.

Chief Justice RICHARDSON delivered the opinion of the court.

The claimant founds his action upon the following acts of Congress:

"And all officers of the Navy shall be credited with the actual time they have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects, in the same manner, as if all said service had been continuous and in the regular Navy: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission, or in the relative rank of such officers. (August 5, 1882, ch. 391, 22 Stat. L., 287.)

"And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects, in the same manner as if all service had been continuous and in the regular Navy, *in the lowest grade having graduated pay held by such officer since last entering the service; Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission, or in the relative rank of such officers; *Provided further*, That *nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer Army or Navy.*" (March 3, 1883, ch. 97, 22 Stat. L., 473.)

The argument in his behalf rests mostly on the act of 1882, which, it is contended, gives him rights not taken away or modified by the act of 1883. There is no express repeal of the former and it is in force unless superseded and repealed by implication by the latter act.

Mr. Justice Field, in the case of United States v. Tynen, (11 Wall., 88,) speaking for the Supreme Court, thus states the rule as to repeals by implication:

"When there are two acts on the same subject the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first.

"And even where two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act."

That decision has been cited, approved and followed as enunciating the true principle of interpretation in Murdoch v. Memphis, (20 Wall., 317); King v. Cornell, (106 U. S., 395); United States v. Auffmordt, (19 Fed. Rep., 897,) and numerous other cases.

In the present case the clauses of both acts are on the same subject, the latter covering the whole of the former, with two limitations added.

The whole language of the first, word for word, is reproduced in the second, and the only difference between the two consists in the words of the latter which we have put in italics.

We can best express our views by adopting the language of Mr. Justice Miller, in Murdoch v. Memphis, (20 Wall., 617,) and applying it to the present statutes.

"A careful comparison of these two [sections] [*clauses*] can leave no doubt that it was the intention of Congress, by the latter statute, to revise the entire matter to which they both had reference, to make such changes in the law as it stood as they thought best, and to substitute their will in that regard entirely for the old law upon the subject. We are of opinion that it was their intention to make a new law so far as the present law differed from the former, and that the new law, embracing all that was intended to be preserved of the old, omitting what was not so intended, became complete in itself and repealed all other law on the subject embraced within it. The authorities on this subject are clear and uniform."

The act of 1882 merely offered to officers of the Navy a gratuity, entirely wanting in essential elements of contract or of vested right, and Congress might withdraw or modify the offer at any time before consummation by payment.

That act and the offer therein contained having been modified by the second act, before this action was commenced, the claimant's rights must depend wholly upon the latter provision of law and we shall so treat the case.

The claimant was appointed acting assistant paymaster in the volunteer Navy, January 30, 1864; assistant paymaster, March 2, 1867; passed assistant paymaster, February 10, 1870; and paymaster in the regular Navy, May 29, 1882, and has been continuously in the Navy from his first appointment to the present time.

Each one of these grades had graduated pay when held by him, and he has received all the longevity pay on that account to which he was entitled under the acts of July 17, 1861 (12 Stat. L., 258), and March 2, 1867, chapter 197, section 3 (14 Stat. L., 516).

Nothing is now demanded as mere longevity pay. It was conceded at the argument that the claimant cannot recover anything unless the statute is to be interpreted, as he urges, as giving to him the sums—salary and allowances—which he would have received had he entered the regular Navy when he entered the volunteer Navy and been promoted from time to time to higher grades under the rules of promotion provided by Revised Statutes, sections 1380, 1458, 1496 and the previous acts embodied therein.

In our opinion the act of 1883 does not admit of the interpretation thus presented. Whatever

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ambiguity may have existed on that point in the act of 1882 was removed, we think, by the additional provisions or limitations incorporated into the act of 1883, which is the only one we are now dealing with.

The judicial decisions heretofore made in cases arising under that act have proceeded upon the ground that to each officer of the Navy there should be credited *in the lowest grade* having graduated pay when held by him since last entering the service the actual time he may have *previously* served as an officer or enlisted man in the regular or volunteer Army or Navy, or both, and that he should receive all the benefits of such actual service so credited in the same manner as though all such service had been continuous and in the regular Navy *in such lowest grade* (Rockwell's Case, 21 C. Cls. R., 332); affirmed on appeal (120 U. S. R., 60); (Hawkin's Case, 19 C. Cls. R., 611; Foster's Case, 23 C. Cls. R., ———).

In neither of those cases was it claimed as now, or suggested, that an officer was entitled to any additional money benefit by adding his term of service in the lower grades not having graduated pay, to his time of service in any and *all the grades* having graduated pay subsequent to the first held by him since entering the Navy.

The effect of the act, as interpreted by those decisions, and as we understand it, is to lengthen the time of service in such *lowest grade* having graduated pay, by crediting thereto all previous service, for the purpose of increasing longevity pay in that grade only. The higher grades are neither mentioned nor referred to in the act, and are in no way to be considered with reference to it.

The claimant has been in the Navy, volunteer and regular, since 1864, in various grades, all having graduated pay. He seeks to have credited to him all the time of his service in all these grades added together, and to be allowed the pay, salary and emoluments which he would have been entitled to in each of the grades which he might have held had he been regularly promoted and appointed from time to time under existing law.

If it were possible to solve the complicated problem of promotion *which he might have had*, involving, as it does, the promotion of many other officers above and below him in rank, who would in like manner be affected by the provisions of the statute, and whose promotion, dependent upon previous service not proved in this case, would materially affect his own, we are clearly of opinion that the interpretation of the statute upon which the claim is founded is not sound and cannot be adopted. The statute expressly provides that the actual service therein mentioned and the benefits arising therefrom shall be credited in but *one grade*, and that one *the lowest grade* held by him having graduated pay since last entering the service, while he is seeking to obtain benefits from the act throughout all the different grades which he held, or might have held, upon his theory of promotion.

In our opinion, as before stated, the act has no reference to benefits derived from promotion to *different grades*, but is confined in its money benefits to *one grade*, the lowest grade having graduated pay; and that benefit can be nothing else than longevity pay on account of length of previous service.

The petition must be dismissed.

UNITED STATES CIRCUIT COURT.

EASTERN DISTRICT OF ARKANSAS.

CITIZENS' STREET RAILWAY COMPANY v. JONES.

Decided March 15, 1888.

1. When a statute authorizing a municipal corporation to contract "for the purpose of providing street railroads," and conferring "for the time which may be agreed upon, the exclusive privilege of using the streets and alleys of such city for such purpose," it is the actual use of the streets for the purpose which confers the exclusive privilege, and the exclusive right to use the same attaches only when the use or its equivalent begins, and the city has no power under such a grant to devolve on any contractor the duty it owes to the public of determining when and on what streets the public convenience requires a line of road.
2. Where an instrument is susceptible of two interpretations, one of which will antagonize the law and render it invalid, and the other will harmonize with law and give it validity, the latter interpretation will be adopted.
3. Grants of franchises by public corporations are to be strictly construed, and no exclusive privileges pass unless by express words or necessary implication.*

In Equity. Bill to restrain the building of a street railway by defendant, plaintiff claiming the exclusive privilege in the city by virtue of a contract with the city.

CALDWELL, J.—The foundation of the plaintiff's case is an ordinance of the city of Pine Bluff, passed on the 4th day of February, 1885, and adopted as a contract on the 24th day of March, 1885. The provision of the contract on which the case turns reads as follows:

"That for the purpose of providing for a single-track street railway or street railways, the said party of the first part [the city of Pine Bluff] does hereby grant unto said party of the second part [John O'Connell, Frank Silverman, and Sam Fries] and their assigns, for the term of ninety years from the date of this contract, the right of way on, over and along the following streets, to wit: All of Barraque street, all of Broadway street, all of Fugate street, all of Newton street, their present and future limits, and all other streets within the present and future corporate limits of the city of Pine Bluff, as the parties of the second part think public necessities require, with the exclusive privilege of using said streets and said designated portions thereof for the purpose of constructing, operating, maintaining, and owning such street railway thereon."

The contract required the construction, within three years from its date, of a railway over the following streets: On Fugate from Broadway to Barraque, thence on Barraque to Newton, thence on Newton to Broadway, and thence on

*Respecting the power of a State or municipality to create a monopoly, see Stein v. Supply Co., 34 Fed. Rep. 145, and note; Teachout v. Railway Co. (Iowa), 38 N. W. Rep., 145.

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Broadway to Fugate; but by a later ordinance this requirement was so modified that the company was only required to build, within three years, a railway on Barraque street for a distance of 10 blocks, and the company is under no obligation to construct any more railroad in the city during the life of the contract—90 years. The plaintiff is assignee of the contract. On the 9th day of August, 1886, the city entered into a contract with the defendant, Wiley Jones, whereby he was authorized to build and operate a street railway on certain named streets in the city, on which the plaintiff has not constructed, and does not propose to construct, such a railway. The object of this suit is to enjoin the defendant from constructing or operating a street railway on the streets of the city included in his contract, upon the ground that the plaintiff under its contract has an exclusive right to the use of all the streets of the city for street railway purposes, and that this exclusive right is not restricted to the streets on which it has constructed its railway, but extends as well over all the streets of the city upon which it has not constructed, and does not propose to construct, such railway.

The power granted to the mayor and council to contract on this subject, is, as the act in terms declares, "for the purpose of providing * * * street railroads," and it is for that purpose they are authorized to grant "for the time which may be agreed upon the exclusive privilege of using the streets and alleys of such city for such purpose. * * *" Section 755, Mansf. Dig. It is the actual use of the street for the purpose that confers the exclusive privilege. The City Council has not the power to agree that if the contractor will build a street railway on one street in the city he shall be under no obligation to build on any other street for 90 years, and that for that period the city shall not itself build such railway on any street in the city, or authorize it to be done by others, however much the public convenience and necessity may demand it. The effect of such a contract is not to give the exclusive privilege of using the streets for the purpose of constructing and operating a street railway over them, but it is to give the contractor the exclusive privilege of preventing their use for that purpose. Under such an agreement the the contractor occupies the position of "the dog in the manger." He need not use the streets for a railway himself, and he can prevent the city and all the world from using them for that purpose, regardless of the public wants and necessities. The power and duty of determining when and on what streets the public convenience requires street railroads is devolved by law on the City Council, and that body cannot refuse to discharge this function, or devolve it on a street car company, whose action would be controlled by its own, rather than the public interests. But this is exactly what it is said was done. Whether any more than a few hundred feet of railroad, on one street, should be constructed in a populous and growing city for a period of 90 years, is left to the discretion of the street car company; or, as it is expressed in the contract, "as the parties of the second part think public necessities require." The present company affects to "think" the public convenience and necessities do not require a street railway on the streets over which the defendant, by authority of the city, has constructed one. It declined to build the road itself, and seeks to prevent the defendant from operating the one he built. The City Council was the proper tribunal to determine the public needs in this matter, and, when it did so, and authorized the defendant to build his road on streets not used or occupied by the plaintiff, and which it was under no obligation to so use or occupy, the Council was discharing its duty to the public, and one of its lawful functions under the law of its creation, of which it could not divest itself by any ordinance or contract. But it is said that when in the opinion of the City Council the public needs require street railroads on streets over which the plaintiff declines to build, the city can purchase from the plaintiff by condemnation proceedings, if the price cannot otherwise be agreed upon, the privilege to build on such streets, and in this way repossess itself of the right and power to meet the public wants and necessities. The plaintiff is mistaken in supposing it could gain exclusive dominion and authority over all the present and future streets of the city, so far as relates to their use for street railroads, without building or incurring any obligations to build a street railroad on them. The favor was greater than the City Council had the power to bestow. The right to the exclusive use of a street for a street railway, under the statutes, attaches when the use begins, or what is equivalent to that, when it has been stipulated for, and assured by an obligatory contract. Here there is no such use, and no such stipulation or contract. But the contract does not give the plaintiff the boundless exclusive privilege claimed. It grants "the exclusive privilege of using said streets and said designated portions thereof for the purpose of constructing, operating and maintaining and owning such street railway thereon." This clause of the contract must receive the same construction as the act authorizing the City Council to make it. The exclusive privilege is limited to the streets used "for the purpose of constructing, operating, maintaining and owning such street railway thereon," or in other words, to the streets on which the plaintiff shall build and operate a street railway. This construction makes the contract harmonize with the powers of the City Council under the law. When an instrument is susceptible of two interpretations, and one will put it in antagonism to the law and render it invalid, and the other will make it harmonize with the law and give it validity, the latter interpretation will be adopted. It is also a canon of construction that grants of franchises by public corporations to individuals or private corporations are to be strictly construed, and no exclusive privilege passes, unless it be plainly conferred by express words or necessary implication.—*Federal Reporter.*

ASSESSING HIS DAMAGES.—*Counsel (to complainant):* "And what do you consider the value of the boots that were stolen from you?" *Complainant:* "Let me see—they cost me new sixteen and six, and I've had them soled and heeled twice, that was five shillings; that makes one pound one and six. One pound one and six pence, sir."

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The Sunday Law in the Supreme Court of the United States.

The rigid law of the State of Massachusetts, which provides "Whoever travels on the Lord's day except for necessity or charity, shall be punished by a fine not exceeding $10.00," came before the Supreme Court of the United States in the case of Bucher v. Cheshire R. Co., decided March 19, 1888.

The plaintiff in error had brought an action against the railroad company for injuries sustained while traveling upon the road on the Sabbath day in violation of the law of the State of Massachusetts. The plaintiff had obtained a verdict in the State court, which was reversed by the Supreme Court of Massachusetts, thereupon the plaintiff took a non-suit and brought his action in the Circuit Court of the United States, which court followed the ruling of the State court and dismised the action.

The State ruling was considered binding on the Supreme Court of the United States, because Congress had provided that "The laws of the several states, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply." (Revised Statutes, par. 721.) On the main question the Supreme Court of the United States took occasion to differ from the Supreme Court of Massachusetts and said "We are bound to say that we do not feel satisfied that upon any general principles of law by which the courts that have adopted the common-law system are governed, this is a true exposition of that law. On the contrary, in the case of Railroad Co. v. Tow-Boat Co., 23 How., 209, this court had under consideration the same question which arose in regard to the effect of a statute of Maryland forbidding persons "To work or do any bodily labor or willingly suffer any of their servants to do any manner of labor on the Lord's day, works of charity or necessity excepted," and prescribing a penalty for a breach thereof. It was held by this court that where a vessel was prosecuting her voyage on Sunday and was injured by piles negligently left in the river, this statute, making travelling on Sunday an offense and punishing it by a penalty, constituted no defense to an action for damages by the vessel. In that case, however, there had been no decision of the courts of Maryland holding that a violation of the Sabbath would constitute a defense to the action against the company which had left the piles in the river.

In conclusion, the court said: "We are of the opinion that the adjudications of the Supreme Court of Massachusetts, holding that a person engaged in travel on the Sabbath day contrary to the statute of the State, being thus in the act of violating the criminal law of the State, shall not recover against a corporation upon whose roads he travels for the negligence of its servants, thereby established this principle as a local law of that State, declaring, as they do, the effect of its statute in its operation upon the obligation of the carrier of passengers."

"The decisions on this subject by the Massachusetts court are numerous enough and of sufficiently long standing to establish the rule so far as they can establish it, and we think that taken in connection with the relation which they bear to the statute itself, though giving an effect to it which may not meet the approval of this court, they nevertheless determine the law of Massachusetts on that subject."

Judges FIELD and HARLAN dissented.

It appears that in 1887, after the plaintiff was injured, the legislature of Massachusetts passed a statute declaring that the prohibition against travelling on the Lord's day constituted no defense to an action against a common carrier of passengers for any tort or injury suffered by the person so travelling, but it was held that this act did not govern a case where the injury had occurred before its passage, that it was not retroactive.

The rule of the Federal Supreme Court, in following the decisions of the highest court of the State relating to some law of a local character, and which may have become established by those courts, is usually conclusive upon the Supreme Court and always entitled to the highest respect of the Federal Courts. M.—*Chicago Legal Adviser.*

ANY LAWYER who has cross-questioned witnesses is well enough aware how imperfect a registering instrument is the human mind, or at least how imperfectly one is able to interpret what is registered. It is a remarkable witness and an exceedingly rare one whose memory is genuinely strong enough to withstand the insinuation of clever inquiry and suggestion. Much testimony that is obstinately stuck to is half memory and half self-deception of a witness who has unconsciously pieced out his remembrances with more or less invention, and who is himself unable to distinguish between the original and the interpolations.—*Irish Law Times.*

WHEN the appellant fails to file his brief in the time allowed the judgment will be affirmed. —Matthewson v. Boyle, S. C. Nev., Dec. 28, 1887; 16 Pac. Rep., 434.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

July 2.

11232. Wilhelmina Blumenburg v. Otis Presbrey et al. Com. sol., James H. Graham.

11233. Bettie W. Latham, executrix, v. John R. Pendleton et al. For specific performance. Com. sol., James Lowndes.

11234. The Washington Beneficial Endowment Association v. William Frederick et al. Interpleader. Com. sol., I. L. Johnson.

July 3.

11235. Bertha L. Robinson, by next friend, v. George T. Robinson et al. To sell real estate of infants. Com. sols., C. M. & H. S. Matthews.

11236. Calderon Carlisle, executor of William Myer, deceased, v. E. A. Newman et al. Review.

July 6.

11237. Ellen A. Burdine v. Maggie Fletcher, infant, et al. For partition. Com. sol., E. H. Thomas.

July 7.

11238. Ward H. Lamon et al. v. Henry McKee et al., executors. Injunction. Com. sols., J. B. Hoge, James Coleman, and A. G. Sibbald.

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CIRCUIT COURT.—New Suits at Law.

July 2.

28791. Bettie W. Latham, executrix, v. John R. Pendleton. Notes and account, $1,130. Piffs atty, James Lowndes.
28792. John H. Winston v. Joseph S. Lawrence. Replevin. Piffs atty, J. McD. Carrington.
28793. Millard Metzger et al. v. William H. S. Fridley. Notes and account, $214.92. Piffs atty, F. T. Browning.

July 3.

28794. Thomas J. Fisher & Co. v. Harry C. Bowers. Judgment of Justice Strider, $83.34. Piffs atty, M. J. Colbert.
28795. William Muehleisen v. Carl Roesch. Account, $500.40. Piffs attys, Newton & Lavender.

July 5.

28796. The Oakdale Manufacturing Co. v. George T. Hilton & Co. Account, $210.72. Piffs atty, F. W. Jones.
28797. William P. Wood v. Jane White et al. Appeal.
28798. Same v. Same. Appeal.
28799. Same v. Same. Appeal.
28800. Henry A. Jones v. Louisa Kearney. Judgment of Justice Buckey, $100. Piffs atty, W. S. Jackson.
28801. Same v. Same. Judgment of Justice Buckey, $72.58. Piffs atty, Same.

July 6.

28802. Joseph B. Bryan et al. v. Emanuel Mason. Judgment of Justice Strider, $47.10.

July 7.

28803. Francis A. Petingale v. Abram F. Barker. Notes, $2,100. Piffs atty, J. J. Johnson.
28804. Henry A. Jones v. Robert C. Holtzman. Account, $255.24. Piffs atty, C. C. Lancaster.
28805. Edward Lloyd et al. v. Annie W. Fry et al. Ejectment. Piffs atty, F. H. Mackey.
28806. Same v. Mercy M. Gray et al. Ejectment. Piffs atty, Same.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of July, 1888.

Saul S. Henkle, Trustee, v. William J. Murtagh, George B. Wilson et al. } No. 11196. Equity Docket 28.

On motion of the plaintiff, by Mr. William J. Miller, his solicitor, it is ordered that the defendants, **Wilmer S. Shepherd** and **Alexander R. Shepherd**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a deed of trust from said defendants, George B. Wilson and wife, to said defendant, Wilmer S. Shepherd, to secure the payment of certain promissory notes to defendant, Alexander R. Shepherd, declared paid and satisfied, and for the appointment of a trustee in place of said William S. Shepherd, to release and discharge said deed of trust. And also the object of said suit is to correct errors in the recording of deeds from said George B. Wilson and wife to said Wilmer S. Shepherd, and also the recording of the deeds from defendants, George M. Robeson and wife and Brainard H. Warner and wife to said plaintiff, Saul S. Henkle.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Charles Hartel**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of June, 1888.

EMILIE HARTEL, Ex'x, 814 C st. s. e.
28 No. 3182. Ad. D. 14. Saml. C. Mills, Proctor.

Legal Notices.

CHANCERY SALE OF VALUABLE REAL ESTATE, FRONTING ONE HUNDRED AND SIXTY-FIVE FEET ON THE WEST SIDE OF VERMONT AVENUE, AND IMPROVED BY A MAGNIFICENT RESIDENCE, KNOWN AS NO. 1120 VERMONT AVENUE, NEAR THOMAS CIRCLE.

By virtue of a degree of the Supreme Court of the District of Columbia, passed on the 27th day of June, 1888, in Equity Cause No. 10783, of C. D. Fowler, administrator, and others against George Taylor and others, we will, in front of said premises, on FRIDAY, the TWENTIETH DAY OF JULY, 1888, at FIVE O'CLOCK, P. M., sell at public auction, to the highest bidder, all the right, title and interest of the said George Taylor in and to the following described real estate, to wit: Lots numbered from forty-nine (49) to sixty (60), both inclusive, and the south fifteen $\frac{4}{10}$ (15.41) feet front on Vermont avenue of lot numbered forty-eight (48), by the full depth thereof, all in the said George Taylor's subdivision of part of square numbered two hundred and fourteen (214), on the plat or plan of the City of Washington, in the District of Columbia, as per plat recorded in Liber W. B. M., folio 185, of the records of the Surveyor's office, D. C., being the property now occupied by the said Taylor, on the west side of Vermont avenue, opposite "The Portland Flats."

Said sale will be made subject to a deed of trust made by said George Taylor and wife to R. W. Tyler and R. G. Rutherford, of record in the land records of said District in Liber No. 1136, at folio 47 et seq. The following notes secured by said trust remain unpaid, to wit: One principal note for sixty thousand dollars ($60,000), which matures on the 23d day of July, 1888, and two notes for interest on the note first above mentioned, each for the sum of eighteen hundred dollars, one of which matured on the 23d day of January, 1888, and the other will mature on the 23d day of July, 1888.

Terms of sale: One-third ($\frac{1}{3}$) of the purchase money cash in hand, and the residue in two equal installments on a credit of one and two years respectively from the day of sale, and the purchaser will be required to give his notes for the deferred installments of purchase money, bearing date the day of sale, due in one and two years respectively thereafter, with interest at 6 per cent. from date until paid, payable semi-annually, and to give such security for the payment thereof as may be satisfactory to the undersigned or approved by the court; or the purchaser may pay all cash, at his option. A deposit of $500 will be required on the day of sale, and the purchaser will be required to fully comply with the terms of sale within ten days thereafter, or the property will be resold at his risk and costs.

All conveyancing at purchaser's cost.

WILLIAM TAYLOE SNYDER, Trustee, Corcoran Building.
CHARLES C. COLE, Trustee, Fendall Building.
28

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mabel Howell et al. v. Samuel G. Muir. } In Equity. 10717.

It is, by the Court, this 12th day of June, A. D. 1888, ordered that the offer to purchase the real estate in said case mentioned, made by Alfred Richards, and reported by L. Cabell Williamson, Trustee, be, and the same is hereby, ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of July, A. D. 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the 13th day of July, A. D. 1888.

The report states the amount offered to be $2,600.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
24 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.
June 14th, 1888.

In the case of Anthony Lulley, Administrator of **Emile Lulley**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 6th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
25 No. 2706. Ad. D. 13. A. B. Duvall, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of July, 1888.

Augustus W. Daily v. Rachel Daily. } No. 11116. Docket 28.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1888.

Arthur Herbert et al. v. John Sibley, Anthony Brenner, Trustee. } No. 11212. Eq. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendant, Anthony Brenner, Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain the appointment of a trustee in place of said Anthony Brenner, under a deed of trust recorded in Liber N. C. T. 57, folio 147, of the land records of the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1888.

George W. Smith v. Mary E. Smith. } No. 11162. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Mary E. Smith, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree of divorce from the bond of matrimony on the ground of the desertion of the plaintiff by the defendant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, 1888.

James Edward Green et al. v. Sarah J. Kennedy et al. } No. 11187. Docket 28.

On motion of the complainants, by Mr. Thomas M. Fields, their solicitor, it is ordered that the respondents, Annie E. Bidwell, John Bidwell, Guy R. Kennedy, Joseph J. E. Kennedy, and Cora W. Kennedy (for whom summonses have been issued and duly returned "not to be found"), cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to execute trusts created by deed recorded in Liber 986, folio 354, *et seq.* one of the land records of the District of Columbia, by appointment of a trustee, sale of property, statement of accounts, &c.

By the Court. E. F. BINGHAM, Chief Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Clementina Pleasonton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1888.

LAURA PLEASONTON, Ex'x, 1341 L st. n. w.
Frank W. Hackett, Jno. F. Ennis, Proctors.
28 No. 3143. Ad. D. 14.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Ludolph Friederich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1888.

MARY E. MILLS, Adm'x c. t. a., 617 12th st. n. e.
28 No. 3071. Ad. D. 14. Irving Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of David Dreyfuss, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1888.

BABETTE DREYFUSS, Ex'x, 3292 M st. n. w.
28 No. 3141. Ad. D. 14. I. W. Nordlinger, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of July, 1888.

Amanda Winfree v. Hannibal Winfree. } No. 11147. Eq. Docket 28.

On motion of the plaintiff, by Mr. William C. Martin, her solicitor, it is ordered that the defendant causes his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto; and further, that the said plaintiff may have the care and custody of their child. The ground for said dissolution of said bond of matrimony is willful desertion and abandonment.

By the Court. E. F. BINGHAM, Chief Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, A. D. 1888.

Charles Baker v. Mary Ann Baker. } No. 11193. Docket 28.

On motion of the plaintiff, by Mr. Fred. W. Jones, his solicitor, it is ordered that the defendant, Mary Ann Baker, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER and the *Washington Critic* once a week for three successive weeks before said rule-day.

The object of this suit is for divorce from the bonds of matrimony, on the ground of willful desertion and abandonment by the defendant of the plaintiff for the full uninterrupted space of two years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 11th, 1888.

In the matter of the Estate of Robert Moore, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by A. P. Lacy.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of August next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
28 Test: DORSEY CLAGETT, Register of Wills.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Lavinia Black**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of June, 1888.

ROBERT P. YEATMAN, Ex'r, 1013 4½ st. s. w.

27 No. 3133. Ad. D. 14. J. J. Darlington, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Virginia Burnett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 25th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 25th day of June, 1888.

LOUISE M. KEITH, Adm'x,
Berleith, Georgetown Heights.

27 No. 3134. Ad. D. 14. George Earle, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Jane Clark**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 2d day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 2d day of July, 1888.

JESSE H. WILSON,
GUY CARLTON,
Executors.

28 No. 3127. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Jonathan Kirkwood**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of July, 1888.

THOMAS McGILL, Ex'r, 1107 E st. n. w.

28 No. 3062. Ad. D. 14. John Ridout, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William H. Bergman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1888.

MARY O. BERGMAN, Ex'x, 1251 6th st. n. w.

28 No. 3131. Ad. D. 14. A. C. Richards, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary, on the personal estate of **Angela** or **Angelina Gatto**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1888.

PAUL BONAVIRES, Ex'r, 1202 Pa. ave. n. w.

28 Francis Toumey, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 6th, 1888.

In the case of John M. Mitchell, Administrator of **Henry Striker**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 27th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

28 No. 2763. Ad. D. 13. Leon Tobriner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 6th, 1888.

In the case of Arthur T. Brice, Administrator of **Arthur Shaaff**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 27th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.

28 No. 7676 Old Series. Ad. D. 7.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, 1888.

Emma Johnson.
v.
John H. Cook et al. } No. 11119. Eq. Docket 28.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendants, **William M. Cook, Joseph T. Settle, and John H. Cook**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the deed of trust dated on the 3d day of June, 1872, and recorded in Liber 591, folio 164, released. The said deed having been given by Emma Johnson and her husband to John H. Cook, senior, Trustee, now deceased, to secure defendant Settle in the payment of $250.00. It being claimed that said indebtedness has been paid.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, 1888.

Lewis W. Hollinberger et al.
v.
William Cowell et al. } No. 11183. Docket 28.

On motion of the plaintiffs, by Messrs. McGrew & Small, their solicitors, it is ordered that the defendants, **William W. Cowell, William Makepeace, Ebenezer C. Millett, Parthenia Durant, Phebe Morrill, Mary Walker, sr., Mary Walker, jr., Society for Increase of the Ministry, Sarah B. Wild, Sarah E. Millett, Eliza H. Smith, Mary T. Derby, and Lucretia Townsend**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud on title to lots 68 and 69 Groff's subdivision, square 867, and lots 34, 37, 38, 39, 40, 41, 42, 43, 44, and 45, of Linvilles' subdivision, square 867.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

28 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **John Deuringer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of June, 1888.

PAUL O. BACHSCHMID, Adm'r c. t. a., 620 8 st. n. w.

27 No. 3051. Ad. D. 14. Kennedy & Shellabarger, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Catherine Wilson, Guardian, v. **Catherine Miller, otherwise known as and called Daisy Miller et al.** } No. 11073. Equity.

Edward A. Newman, the Trustee appointed herein, having reported the sales of the following described real estate situate in the city of Washington and District of Columbia, to wit, lot numbered 36 in the recorded subdivision of original lots 15, 16, 17, 18, and 19, in square numbered 204, fronting 20 feet on the west side of 14th street west, between U and V streets north, and running back 138 feet 6 inches to an alley, unimproved, containing 2,770 square feet, at and for the sum of one dollar and fifty-two cents per square foot, amounting to $4,210.40, to Richard T. Pettit, and all that part of lot numbered 16, in square numbered 551, situate in said city and District, beginning for said part at the northeastern corner of said lot and running thence south 130 feet, thence west 16 feet 4½ inches, thence north 130 feet, thence east 16 feet 4½ inches to the beginning, improved by a two-story frame house, to Charles F. F. Rosenthal, at and for the sum of $1,325.00, it is, therefore this 29th day of June, 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown or before the 30th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

The said sales aggregate $5,535.40.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

27 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 26th, 1888.

In the case of Charles H. Trunnel, Executor of **Catharine Heiss** or **Hess**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 20th day of July, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

27 No. 2773. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity.

June 27, 1888.

Zachariah Coleman v. **Abraham Gibson.** } 10949. Eq. Doc. 27.

Walter B. Williams, Trustee, having reported to the Court the sale of sub-lot 53, in J. W. Jones' subdivision of square 545, as the same is recorded in Liber N-K., folio 267, of the records of the Surveyor's office of the District of Columbia, under the terms of sale as set forth under a decree rendered in this suit on the 23d of March, 1888, and it further appearing from said report that Charles Ford became the purchaser of said property, at public auction, for the sum of $980.00, it is, by the Court, this 27th day of June, ordered and decreed that the said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 27th day of July, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,

26 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber has obtained from the Orphans' Court of Baltimore City Letters of Administration on the estate of **William S. Whiteley, junior**, late of said city, deceased.

All persons having claims against said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of December next; they may otherwise by law be excluded from all benefit of said estate. All persons indebted to said estate are requested to make immediate payment.

Given under my hand this 27th day of June, 1888.

27 J. HOLMES WHITELEY, Adm'r.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

Perry Matthews et al. v. **Emeline Williams et al.** } Eq. No. 10664.

Julius Maedel, the Trustee appointed by the decree of court in this cause to sell the property involved therein, being the south 100 feet of lot 43 of S. S. Loomis' recorded subdivision of lots in square 69, in the city of Washington, D. C., having reported that he has sold the said property to Thomas M. Burt, at private sale, for the sum of eleven hundred and twenty dollars and twenty cents ($1,120.20), and subject to all taxes and the claim of Wm. L. Bramhall's interest in said property, and that the purchaser has complied with the terms of sale, it is, this 14th day of June, A. D. 1888, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter before said 14th day of July, A. D. 1888.

CHARLES P. JAMES, J.

A true copy. Test: R. J. MEIGS, Clerk.

26 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Wilhelm Mueller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of June, 1888.

CHARLES MUELLER, Adm'r c. t. a., 3029 M st. n. w.

26 No. 3114. Ad. D. 14. W. K. Duhamel, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas A. Newman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of June, 1888.

T. ALBERT NEWMAN, Ex'r, 3136 Bridge st.

27 No. 3092. Ad. D. 14. J. J. Waters, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 29th, 1888.

In the matter of the Estate of **Mary A. Taylor**, late of the city of Washington, District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Orlando B. Willcox, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 20th day of July next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.

27 Test: DORSEY CLAGETT, Register of Wills.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Arianna J. Lyles, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of May, 1888.

ELEANOR A. MAGRUDER,
ARIANNA E. WARD,
Executrices.

26 No. 3019. Ad. D. 14. J. J. Waters, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary S. Naylor v. Henry Naylor et al. } In Equity. No. 9827. Doc. 24.

It is, this 26th day of June, A. D. 1888, ordered that the sale reported by the Trustees in the above-entitled cause, in their report this day filed, be, and the same are severally hereby, ratified and confirmed, unless cause to the contrary be shown on or before July 26th, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said date last mentioned.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
26 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James E. Young v. Cecelia F. Young et al. } No. 10769. In Equity.

James S. Edwards and Westel Willoughby, the Trustees appointed herein to make sales of the real estate and premises in this cause decreed to be sold, having reported that they have made sales of all of said real estate and premises, which sales are particularly and in detail set forth in said report, it is, this 21st day of June, A. D. 1888, ordered, adjudged, and decreed that said sales will be approved and confirmed on Monday, the 23d day of July next, unless cause to the contrary be shown before that day.

Provided a copy of this order be published once a week for three successive weeks before said last-mentioned day in the Washington Law Reporter, printed and published in the city of Washington, District of Columbia.

The report states that the aggregate of the sales amounts to the sum of seventeen thousand four hundred and thirty-four dollars and sixty cents ($17,434.60).

CHARLES P. JAMES, Justice.

A true copy. Test: R. J. MEIGS, Clerk.
26 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
June 22d, 1888.

In the case of Cecelia F. Young, Administratrix of Robert W. Young, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 20th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
26 No. 2698. Ad. D. 13. Edwards & Barnard, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William Henery, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of June, 1888.

SARAH HENERY, Ex'x, 465 F st. s. w.

26 No. 3078. Ad. D. 14. Edwards & Barnard, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
June 22d, 1888.

In the matter of the Estate of Peter McIntyre, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Sister Beatrice, of Providence Hospital.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 2 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter and Evening Star previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
26 C. C. Lancaster, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
June 22d, 1888.

In the matter of the Estate of John Farrell, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased has this day been made by Frank Hume, a creditor.

All persons interested are hereby notified to appear in this Court on Friday, the 13th day of July next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
26 S. T. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
June 19th, 1888.

In the case of Randall Hagner, Administrator c. t. a. of Robert P. Dodge, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 13th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
25 No. 2748. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Joseph E. Johnston. v. Henry B. McLane et al. } Equity No. 10923.

The Trustee in above cause having reported the sale of the real estate in the proceedings named, to wit, lot numbered thirty-three (33) in Shepherd and Kirby's recorded subdivision of square numbered one hundred and sixty-four (164), as recorded in Surveyor's Liber J. H. K., page 137, at and for the sum of twelve thousand one hundred ($12,100) dollars, it is, this twenty-ninth day of June, A. D. 1888, ordered and decreed by the Court that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the thirtieth day of July, A. D. 1888.

Provided that a copy of the above order be published in the Washington Law Reporter once a week for three successive weeks before said 30th day of July, A. D. 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
27 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 2d day of July, 1888.

Sarah Ann Lockwood. v. Agnes Bolden Place et al. } No. 11124. Docket 28.

Upon hearing of the Trustees' report filed herein, it is, this 2d day of July, A. D. 1888, ordered that the sale herein reported be, and it hereby is, ratified and confirmed, unless cause thereof to the contrary be shown on or before the 1st day of August, A. D. 1888.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
27 By M. A. CLANCY, Ass't Clerk.

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Alabama Revised Code, 1867.
Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
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Barbour on Set-off.
Bissett on Partnership, 1874.
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Bradly on Wills.
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Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
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Foster on Scire Facias, 1857.
Gilbert on Devises.
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Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
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Louisiana, 1 to 10 Martin.
Lovelass on Wills.

Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
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New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
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Preston on Abstracts of Title, 2 vols. in one.

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Smith's Probate Law, 1868.
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Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 -2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
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Williams on Executors, &c., vol. 2, Thobault's Notes.

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VOL. XVI. - - - - - - - No. 29
WASHINGTON, D. C. - - - - - JULY 18, 1888

Office Business.

One of the highest functions of an attorney and counsel is one that is least conspicuous. The services of an advocate in court are recorded and reported; the services of an adviser in his office are guarded in secrecy, and the more important they are the less is known about them.

To be able, when the client needs counsel upon important interests at a critical exigency, to survey the whole field affected, to see the bearing of remote facts on all the connected interests, to appreciate what is the ultimate object to be aimed at, what the difficulties to be overcome, and what the policy and order of the steps to be taken, is to possess the best powers which legal wisdom and training can develop. In such power lies what may be called the general strength of counsel. This is a versatile gift, and even without special experience or conversance with details of the particular points of law involved, and without the special gifts of the advocate, it qualifies to take the helm, to map out the course, to direct what special researches shall be made and who is the best one to make them, what action or proceeding shall be taken as the first move, and on what lines, and who shall appear as attorney, what negotiation shall be undertaken, and how it shall be approached.

There is nothing in any of the games of chance or skill which engage men's efforts, which can compare with the intellectual pleasures of such a task. The lawyer confronting what at first seems an inextricable confusion, or an insuperable combination of barriers, finds gradually that their aspect yields to his persistent analysis. As he gathers the facts, compares the conflicting representations, weighs the adverse elements of the situation, he begins to see a path opening before him. The task of laying out his policy is often as interesting as the plan of a political or military campaign. He may, just because he knows all the ins and outs of the complex situation, employ one agency to accomplish one move, and another for another move, and sit himself silent and perhaps apparently inactive; but he is at the center, and the various activities of his office, and sometimes those of others, are only the results of his direction.

It takes not only good judgment of the broadest kind and most conservative disposition to organize success out of a difficult situation but courage to take responsibility, and pluck and persistance to give effect to judgment and courage.

Such advisers, when they unite with these qualities the instinctive loyalty to the interests of clients which professional service demands, are simply invaluable both to the clientage they serve and the firms and offices in which they fill a somewhat silent and undemonstrative part.

Every lawyer is brought into contact with some business which requires or invites such services. There are many who do not relish either the severe application in silent investigation and thought, nor the responsibility of direction; they would rather have instructions for a given action, or a brief to try a specific action, and go and try it. But the general course of professional business probably calls more and more for increasing service of this sort. The number of clients who appreciate and employ continuous legal advice in their various business enterprises is doubtless increasing faster than that of those who have particular and isolated actions to bring.—*The Daily Register.*

SUPREME COURT OF THE UNITED STATES.

PREPARED BY E. S. MCCALMONT.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, *Appellant*, v. THE UNITED STATES.

Decided May 14, 1888.

Section 3962 of the Revised Statutes, which authorizes the Postmaster-General to make deductions from the pay of contractors for failures to perform service according to contract, and impose fines upon them for other delinquencies, etc., was not repealed by Section 5 of the Act of March 3, 1879, making appropriations for the service of the Post Office Department.

Appeal from the Court of Claims.

STATEMENT.

The petitioner, the Chicago, Milwaukee and St. Paul Railway Company, is a corporation formed under the laws of Wisconsin, and owns and operates several lines of railway in that State, and in the States of Illinois, Iowa and Minnesota, and in the Territory of Dakota. In 1879 it entered into sundry contracts with the Post Office Department to transport the mails of the United States over its lines on specially designated routes, at rates fixed under the acts of Congress of March 3, 1873, June 12, 1876, and June 17, 1878. The petitioner alleges that it transported the mails upon all the routes designated in accordance with the contracts, except when prevented by the elements or other unavoidable disasters; that between the autumn of 1880 and spring of 1883, owing to snow-blockades, floods and other unavoidable causes, which it was impossible for the petitioner to provide against, it was prevented at various times from running its trains of cars over the routes, and consequently the mails were delayed and accumulated until the cars could be got through; but the petitioner did finally carry all the mails over the routes, and as frequently as it was possible; that the Post Office Department deducted from the pay of the petitioner at divers times, during the period mentioned, a large sum of money, claiming a right to do so because of the failure of the petitioner to transport the mails upon the ordinary schedule time for the departure and arrival of the mails, notwithstanding the failures were owing to no want of diligence or care in the petitioner, but were owing wholly to the causes mentioned; and that such reductions amounted to $31,251.86, which sum the petitioner alleges is

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unjustly and unlawfully held from it, and therefore asks judgment for the amount. A demurrer to this petition, that it did not allege facts sufficient to constitute a cause of action, was interposed by the United States and sustained by the court. Judgment was accordingly entered dismissing the petition, and the petitioner appealed to this court.

Mr. Justice FIELD delivered the opinion of the Court.

The deductions from the compensation claimed by the railway company for its failure to make the trips required, that is, to render the service stipulated, of which it complains, were made by the Postmaster-General under section 3962 of the Revised Statutes, which is as follows:

"The Postmaster-General may make deductions from the pay of contractors, for failures to perform service according to contract, and impose fines upon them for other delinquencies. He may deduct the price of the trip in all cases where the trip is not performed; and not exceeding three times the price if the failure be occasioned by the fault of the contractor or carrier." This section in terms applies to all contractors, and, standing alone, there would not be any serious contention against, the authority of the Postmaster-General to make the deductions complained of. It is not pretended that the amounts exceeded those mentioned in the section. It is, however, insisted that the section, so far as applicable to railroad companies, was repealed by Section 5 of the Act of March 3, 1879, making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1880, which provides:

"That the Postmaster-General shall deduct from the pay of the railroad companies, for every failure to deliver a mail within its schedule time, not less than one-half the price of the trip, and where the trip is not performed, not less than the price of one trip, and not exceeding, in either case, the price of three trips: *Provided, however*, That if the failure is caused by a connecting road, then only the connecting road shall be fined. And where such failure is caused by unavoidable casualty, the Postmaster-General, in his discretion, may remit the fine. And he may make deductions and impose fines for other delinquencies." (20 Stat., chap. 180, p. 358.)

This latter section was repealed on the 11th of June, 1880, (21 Stat., chap. 206, p. 178); and Section 12 of the Revised Statutes provides that the repeal of a repealing statute shall not revive the original act. It is, therefore, contended that there was no statute in force which authorized the deductions at the time they were made between the autumn of 1880 and the spring of 1883, during which period the alleged failures in the mail transportation occurred.

There is a brief and conclusive answer to this contention. Section 3962 of the Revised Statutes is not repealed by Section 5 of the Act of 1879. Section 3962 authorizes a deduction from the pay of contractors, whether they be natural persons or corporations, the price of the trip in all cases where the trip is not performed, and not exceeding three times the price if the failure be caused by the fault of the contractor or carrier. Section 5 of the Act of 1879 applies only to railroad companies, and has special reference to failures of delivery within schedule time, and makes a difference between them and failures to make the trips, leaving the provision for the latter substantially as it is in the Revised Statutes. When there are two acts or provisions of law relating to the same subject, effect is to be given to both, if that be practicable. If the two are repugnant, the latter will operate as a repeal of the former to the extent of the repugnancy. But the second act will not operate as such repeal merely because it may repeat some of the provisions of the first one and omit others, or add new provisions. In such cases the later act will operate as a repeal only where it plainly appears that it was intended as a substitute for the first act. As Mr. Justice Story says, it "may be merely affirmative, or cumulative, or auxiliary." (Wood v. United States, 16 Pet., 363.)

The most that can be said of Section 5 of the Act of 1879, construed with reference to Section 2962 of the Revised Statutes, is that it makes an exception to the provisions of that section, so far as railway companies are concerned. Its repeal, therefore, leaves the original section in full force. The repeal was before the failures occurred for which the deductions complained of were made.

Judgment affirmed.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

MOORE ET AL.
v.
SHANNON ET AL.

IN EQUITY 9561. DOCKET 25.

The CHIEF JUSTICE and JUSTICES HAGNER and JAMES sitting.

The act of 1876 does not give the right to partition in kind or by sale where the parties are not actually seised or in possession of the land.

Decided November 7, 1887.

Appeal from a decree refusing a partition.

The case is sufficiently stated in the opinion.

EDWARDS & BARNARD, for complainants:

R. ROSS PERRY, for defendants:

Mr. Justice HAGNER delivered the opinion of the court:

This bill was filed in August, 1885, by all the surviving children of George W. Talburtt, except the defendant, Mrs. Shannon, against Mr. and Mrs. Shannon and the widow of Talburtt, to procure the partition of six lots of ground in Washington County, to be effected by a sale. The application is resisted by Shannon and wife, but Mrs. Talburtt, the widow, agrees to accept an allowance from the proceeds in lieu of her dower right in the said lots.

This property has been the subject of varied and prolonged litigation in this court. George W. Talburtt died in 1865, intestate, seised of a tract called "Chichester" and of other lands within the District of Columbia.

In May, 1869, Shannon and wife filed a bill numbered 1638, for a partition or sale of all of this real estate.

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In December, 1870, the court appointed commissioners to make partition of all the land; but on the application of the parties this decree was revoked, in January, 1871, and the cause referred to the auditor to examine as to the practicability of a partition.

The auditor's report having declared the property incapable of advantageous partition, the court passed a decree for a sale, under which the greater part of the property was sold; and the widow, Catharine A. Talburtt, was allowed and paid her commutation of dower, in the part thus sold.

In January, 1872, at the instance of the present complainants and of the widow, this decree of sale was in turn revoked, and a decree for partition was, for the second time, passed, as to the property remaining unsold. Under this decree separate parcels of the unsold lands were assigned to the respective heirs, free from all claim of the widow for dower, and the six parcels referred to in the present proceedings were assigned to the widow, "to hold as and for her dower during her natural life;" but no disposition was made of the reversion in the said six lots after the death of the widow.

By consent of parties, in January, 1873, the report of the commissioners was finally ratified and a decree of that date directed the payment of different sums of money by several of the heirs and by the widow, to others of the parties, for owelty of partition. These payments were made, and since that date the children of George W. Talburtt have held undisputed possession of the parcels so allotted to them in severalty by the last decree, and the widow has held and now holds undisputed possession and ownership for life of the six parcels so assigned to her as dower, and it was under these circumstances that the present bill was filed, in the new cause, in August, 1885, which, upon the hearing by the Equity Court was dismissed, and the present appeal is from that decree.

The complainants insist that their right to have a partition of the reversions in the six parcels of land, during the life tenancy of the widow, is secured to them by the act of Congress of August 15, 1876 (19 Stat. L. 202), which declares that all tenants in common and coparceners of any estate in lands, tenements or hereditaments, equitable as well as legal, within the District, may, in the discretion of the court, be compelled to make or suffer partition of such estate, and that the courts, in decreeing partition, may award a sale if it satisfactorily appears that the estate or any interest therein cannot be divided without loss or injury to the parties interested.

The respondents contend that the act of 1879 does not change the general principles respecting partition among coparceners, which, as they claim, denies the right of parties out of possession to have partition (except upon consent of all parties interested), during the continuance of the estate in possession of the life tenant. We are to inquire whether such was the established law at the date of the statute, and if this be so, whether its language, plainly, or by necessary implication, is to be construed as having effected a change in this respect.

The defendants have also interposed other objections to the relief sought, which may be briefly noticed, in advance of the main inquiry.

First. They insist that the relief prayed cannot be granted, because the second decree of partition of January, 1873, exhausted the court of its jurisdiction over the subject, so that the status established by that decree must remain unaltered during the life of the widow. But the two prior decrees containing similar features of a permanent settlement were revoked upon application of all parties, and we cannot agree that this court, upon similar request and assent, would be powerless to assist the parties in varying again the state of affairs surrounding the property at this time.

Second. It is urged that as one of the original coparceners devised her undivided sixth interest in the lots to one of her surviving brothers, he stands, as to that sixth, as a tenant in common with the other parceners, while he retains, as to them, his position as coparcener with respect to his original share—and that the statute should be construed as allowing partition only where the parties are all tenants in common, or all coparceners; and hence no partition could be had, under the statute, between persons holding by mixed tenures, as in this case.

But partition under such circumstances could have been had before the statute, as appears from Coke's statement of the law (1 Thomas' Co. Litt. 697): "If two coparceners be, and one doth alien in fee they are tenants in common, and several writs of *præcipe* must be brought against them, and yet the parcener shall have the writ of partition against the alienee at the common law." "If three coparceners be, and the eldest doth purchase the part of the youngest, the eldest having one part by descent and the other by purchase, shall have a writ of partition at the common law against the middle sister, *et sic de similibus*. And so it is in a far stronger case if there be three coparceners, and the eldest taketh husband, and the husband purchase the part of the youngest, the husband for his part is a stranger and no parcener; and yet he and his wife shall have a writ of partition against the middle sister at the common law, because he is seised of the one part in the right of his wife, who is a parcener."

Coke declares that "This inheritance of coparceners is the rarest kind of inheritance that is in the law," and pronounces the common law rules respecting it to be a "cunning learning." There would certainly be no justification for limiting the operation of the statute, in this particular, by a more technical rule than obtained at the common law under its astute discriminations.

Third. But we are of the opinion that no partition, in kind or by sale, can be had under the statute of 1876, against the consent of any heir, during the life estate of the dowress, while she is entitled to and actually enjoys the possession of the six lots.

The general rule, at the passage of that statute, unquestionably was, that one in remainder or reversion could not have partition during the possession of the life tenant.

Mr. Freeman, in his work on Cotenancy and Partition, states the law thus, in section 446:

"It is a general rule prevailing in England, without exception, and also throughout the ma-

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jority of the United States, that no person has the right to demand any court to enforce a compulsory partition unless he has an estate in possession—one by virtue of which he is entitled to enjoy the present rents or the possession of the property as one of the cotenants thereof." And so are all the authorities.

In Maryland, Warfield v. Gambrill, 1 Gill & J. 503, the rule is stated that to obtain a partition of land in equity, the complainant must allege and establish a seisin in himself. Indeed, there can be no serious contention as to such being the common law of the matter, and it was justified by the consideration, among others, that serious inconvenience and injustice might result to the life tenant, if the reversion were divided among several different proprietors.

The possession of the dowress during her life is certainly such a life estate as is contemplated by the rule; for by the allotment she alone stands seised during the continuance of her life estate, to the total exclusion of the heirs.

In Childs v. Smith, 1 Md. Ch. 487, where all the parcels of the estate were assigned by the decree to the children, and the widow's dower was allotted by the same decree in a distinct portion of each parcel, the chancellor says: "Whether the assignment of her dower preceded or followed the partition among the heirs in the order of time, can, in my judgment, have no influence in determining the extent to which she may use her lands. Her interest is a continuation of the seisin of her husband, the seisin of the heir being defeated *ab initio*, the moment the certainty of the estate to be held by the widow is ascertained by the assignment. So soon, then, as in this case, as the particular lands which the widow was to hold for her dower were ascertained by the assignment of the commissioners, the right of the heirs was defeated, whether the partition among them had been made or not, and the dowress was in, in legal intendment, of the seisin of her husband."

The chancellor refers, in support of his remarks, to 1 Roper on Husband and Wife, 427, and to 4 Kent's Commentaries, 69, where the same languge is used, with the statement that the fact that the widow's seisin is to be held as of the husband's, is the reason why neither livery nor writing was essential to an assignment of dower *in pais*.

The primary purpose of the present application is a partition *in kind*, and a sale is only claimed because an actual partition was alleged to be impracticable. A sale can only be decreed in a case where division *in specie*, would be decreed if the lands admitted of actual partition. But if it were proved in such a case that actual partition was practicable, and the court should, therefore, decree partition, it is obvious the heirs could not take any possession of the parts of the land assigned to them, until the death of the widow, by which time the condition of the members of the family might be greatly changed. Besides, the decree in partition in case No. 1638. which was assented to by the parties to the original cause, partook of the character of a family settlement as to the lands then involved, by which each agreed to the relinquishment of something in exchange for something yielded by the others, and it might be a hardship now to compel a serious modification of that arrangement against the consent of any of the parties.

As this rule of the law, as it existed at the date of the act of 1876, would have applied to a case like the present, the inquiry remaining for consideration, is whether that statute changed the rule. If the complainants' contention is to prevail, it must appear that the intention to effect the change was declared in express words, or is evidenced by necessary implication. It is plain the statute does not express that purpose in such direct terms, as we would expect to find if Congress intended to change the existing law, and as has been enacted in the statutes of one or more of the States. And a careful examination of the language has satisfied us that it contains nothing which necessarily implies such a purpose. Construing the statute according to the obligatory rules of construction, we have arrived at the opinion that although a tenant in common or coparcener within this District may compel partition, whether his title be legal or equitable, it is still, notwithstanding the act of 1876, indispensable to his right to institute such proceedings that he shall be actually seised or in possession of whatever estate he may claim to be entitled to.

The decree below is, therefore, affirmed.

UNITED STATES COURT OF CLAIMS.

WILLIAM J. GRAMBS v. UNITED STATES.

The term of office of a naval cadet expires with the completion of his six years' course at the Naval Academy, when if not appointed to another and different office he, *ipso facto*, ceases to be an officer in the Navy and cannot claim compensation as an officer thereafter, even though he was plainly entitled by law to appointment in the line upon the successful completion of his six years' course.

OPINION.

Chief Justice RICHARDSON delivered the opinion of the court.

The claimant entered the Naval Academy as a cadet midshipman, and belonged to the class which finished its six years' course in 1884, whose official designation was changed to naval cadet, and who otherwise became subject to the provisions of the act of August 5, 1882, ch. 391 (22 Stat. L., 285), which are as follows:

All the undergraduates of the Naval Academy shall hereafter be designated and called "naval cadets."

And from those who successfully complete the six years' course appointments shall hereafter be made as it is necessary to fill vacancies in the lower grades of the line and Engineer Corps of the Navy and of the Marine Corps.

And provided further, That no greater number of appointments into these grades shall be made each year than shall equal the number of vacancies which has occurred in the same grades during the preceding year; such appointments to be made from the graduates of the year, at the conclusion of their six years' course in the order of merit, as determined by the Academic Board of the Naval Academy.

The assignment to the various corps to be made by the Secretary of the Navy upon the recommendation of the Academic Board.

But nothing herein contained shall reduce the number of appointments from such graduates below ten in each year nor deprive of such appointment any graduate who may complete the six years' course during the year 1882.

And if there be a surplus of graduates, those who do not receive such appointment shall be given a certificate of graduation, an honorable discharge and one year's sea pay, as now provided by law for cadet midshipmen; and so much of Section 1521 of the Revised Statutes as is inconsistent herewith is hereby repealed.

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After graduation he received from the Secretary of the Navy the following certificate and notice:

NAVY DEPARTMENT,
WASHINGTON, *June* 26, 1884.

SIR: Having successfully completed your six years' course at the United States Naval Academy, and having been given a certificate of graduation by the Academic Board, but not being required to fill any vacancy in the Naval Service happening during the year preceding your graduation, you are hereby honorably discharged from the 30th of June, 1884, with one year's sea pay, as prescribed by law for cadet midshipmen, in accordance with the provisions of the act of Congress approved August 5, 1882.

He was paid one year's sea pay, mentioned in the certificate, and his undergraduate pay up to the time of graduation. His name was dropped from the Navy Register, and he has performed no further service and has received no further pay.

His claim now is that by the determination of the Academic Board as to the order of merit of those entitled to a competitive examination he was of those who by statute had a right to be appointed to one of the vacancies then existing in the lower grades of the Line and Engineer Corps of the Navy and of the Marine Corps; that his certificate of discharge, received from the Secretary of the Navy, was founded on error, was void and of no force, and that he is still an officer of the Navy and entitled to pay as such.

There were twenty-five vacancies to be filled, sixteen in the Line, five in the Engineer Corps and four in the Marine Corps.

The Examining Board received for competitive examination and examined not only the naval cadets of the graduating class of that year, 1884, but also the members of the class of cadet engineers who completed their two years' sea service at the same time, but who had graduated at the Academy in 1882.

This was in pursuance of the interpretation of the statute held by the Navy Department, that cadet engineers who at the time of the passage of the act were serving their two years' course at sea, after having completed their four years' course at the Academy in 1881 and 1882, were "undergraduates at the Naval Academy," and so were made "naval cadets," and became subject to the provisions of the act as to examination, promotion and discharge.

That interpretation was controverted in Leopold's Case, (18 C. Cls., 546,) and we held that cadet engineers thus serving their two years' course at sea were not undergraduates, and, therefore, were not made naval cadets by that act. The same question was subsequently raised and decided in the same way in Redgrave's Case and Perkins' Case, (20 C. Cls., 226, 438.) The decisions in those cases were affirmed by the Supreme Court on appeal (116 U. S. R., 474, 483).

The cadet engineers who completed their two years' course at sea in 1884, were, therefore, not of the "naval cadets" from whom appointments were to be made in the order of merit, as de termined by the Academic Board, and should not have been allowed to compete with the claimant and other naval cadets for appointment to the vacant places.

Omitting cadet engineers from the competitive examination, and excluding one naval cadet who was dropped, the claimant stood No. 20 in order of merit, and so was entitled to be appointed to one of the twenty-five vacant places.

Even if the five vacancies in the lowest grade of the Engineer Corps should have been omitted from those to be competed for by the naval cadets, as exclusively reserved by former laws to be filled by cadet engineers, a construction of the law which we do not adopt, there still remained twenty vacancies in the lowest grade of the Line and the Marine Corps, to which cadet engineers had not by any such laws a right to be appointed, and the claimant, being twenty in order of merit, was entitled to be appointed to one of those places.

Thus, in any view of the case which we can take, the Secretary of the Navy was required by law to give to the claimant a certificate of appointment and an assignment to one of the various corps in which vacancies existed upon the recommendation of the Academic Board.

The Secretary gave him a certficate of discharge in lieu of one of appointment, under an interpretation of the statute which this court and the Supreme Court subsequently decided to be erroneous.

The question then arises: How did this leave the claimant? It is contended that, as the certificate of discharge was unwarranted, he remained in the office of naval cadet and still continues to hold that office. He claims the emoluments of a naval cadet since the expiration of the time to which he was paid by the one year's sea pay in advance received with his certificate of discharge, or the pay of the office to which he was entitled by law to have been appointed.

We can not concur in these views. In our opinion the term of office of naval cadets, as did that of cadet midshipmen, expires with the completion of six years' course, when, if not appointed to another and different office, they *ipso facto* cease to be officers in the Navy.

The Revised Statutes provide as follows:

SECTION 1512. The students at the Naval Academy shall be styled cadet midshipmen.

SECTION 1513. There shall be allowed at said Academy one cadet midshipman for every member or delegate of the House of Representatives, one for the District of Columbia, and ten appointed annually at large.

SECTION 1520. The academic course of midshipmen shall be six years.

SECTION 1521. When cadet midshipmen shall have passed successfully the graduating examination at the Academy, they shall receive appointments as midshipmen and shall take rank according to their proficiency as shown by the order of their merit at the date of graduation.

There are no provisions in the statutes for cadet midshipmen, or naval cadets as now called by the act of August 5, 1882, beyond the term of their course at the Academy. If at their final graduation they receive appointments to other and different offices as provided by law, they remain in the Navy, not as naval cadets, but as officers of the grade of the line, to which they are thus appointed. If not promoted they go out of office because their academic course has ended, and the office of cadet midshipman or naval cadet has expired. A new class has taken their place at the Academy, and the previously existing vacancies in the grades of offices which they were eligible have been filled.

The act of July 15, 1870, ch. 295, sec. 11 (16 Stat. L., 334), made students at the Naval Academy cadet midshipmen, but did not include them among the grades of the Line Officers of the Navy.

The lowest of these officers remained mid-

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shipmen, and so continued (Rev. Stat., 1362,) until changed to ensign by the act of March 3, 1883, ch. 91, (22 Stat. L., 472,) and act of June 26, 1884, (23 Stat. L., 60).

There can be no doubt that Congress may directly or indirectly limit the tenure of offices created by law in all cases where the Constitution does not establish it.

Thus it seems clear that the claimant went out of office by the expiration of the tenure limited by the course of legislation. He cannot, therefore, receive pay as a naval cadet. Nor can he have the pay of any other office to which he might and ought by law to have been appointed, for the reason that he does not hold and never has held any other office in the Navy. We have no means of ascertaining what other office he would have been appointed to had the Secretary of the Navy followed the law. He might have been made an ensign in the Line, an assistant engineer, or an officer in the Marine Corps according to assignment intrusted to the discretion of the Secretary, as provided by the act of August 5, 1882, and the salaries of those officers are not all alike. A similar point arose in Benjamin's Case, (10 C. Cls. R., 475.) The court there held that if a midshipman, then an undergraduate at the Naval Academy, were entitled to be commissioned ensign, and the President should refuse to issue his commission, no action would lie for the salary of the office which he did not possess.

Whether or not the claimant, had he moved in due season, might not have maintained a mandamus to compel the Secretary of the Navy to give him the certificate of appointment to which he was entitled is not in issue here, and we should have no jurisdiction of the question if it were presented.

Instead of pursuing that remedy, or any other until this action was commenced, July 17, 1886, the claimant accepted the one year's sea pay, as provided by law for cadet midshipmen, allowed by the act of 1882 to naval cadets to whom certificates of discharge were given, and to that extent acquiesced in his discharge. (Hildebrand's Case, 13 C. Cls. R., 62; Duryea's Case, 17 C. Cls. R., 24.)

Whether he be estopped by his own laches and acquiescence or not, it is clear to us that he cannot recover in this court the salary of an office which he does not hold.

The status of cadet midshipmen or naval cadets after completion of their academic course must not be confounded with that of cadet engineers who graduated at the academy in 1881 and 1882. We have held in the Leopold, Redgreave and Perkins cases, as before stated, that those officers were not made naval cadets by the act of August 5, 1882, and so were not subject to discharge by the Secretary of the Navy under the provisions of that act.

Cadet engineers, after graduation at the Naval Academy, performed service at sea with increased pay. They were styled "cadet engineers, graduates," on the Naval Register, and were so appropriated for in annual appropriation acts.

They were not required to pass any competitive examination, because they had no claim, as of right, to promotion or appointment to other offices as did cadet midshipmen.

Section 1403 of the Revised Statutes provides that—

> Cadet engineers who are graduated with credit in the scientific and mechanical class of the Naval Academy *may*, upon the recommendation of the Academic Board, be immediately appointed as assistant naval constructors.

Section 1394 provides that—

> Cadet engineers who are graduated with credit in the scientific and mechanical class of the Naval Academy *may*, upon the recommendation of the Academic Board, be appointed by the President and confirmed by the Senate as second assistant engineers.

The President was not *required* to make such appointments, nor was a time fixed at which he should determine whether or not he would appoint any of them. The only provision for their discharge is found in Section 1525 of the Revised Statutes, where it is enacted that—

> Cadet engineers shall be examined from time to time according to regulations provided by the Secretary of the Navy, and if found deficient at any examination, or if dismissed for misconduct, they shall not be continued in the Academy or in the service, except upon the recommendation of the Academic Board.

If not found deficient at any examination nor dismissed for misconduct, they continued in service as cadet engineers until the President saw fit to appoint them to other and higher offices.

Not so with cadet midshipmen, who, as such, disappeared from the Naval Register and from the service immediately upon their graduating examination.

The claimant's petition is dismissed.

SUPREME COURT OF OHIO.

McMONIGAL v. BROWN.

On the 16th of January, 1877, G. executed to B., or order, his promissory note payable one day after date, with interest. On the 9th of March, 1877, B. indorsed and delivered the note to M. At the time of indorsement it was mutually agreed between the indorser, indorsee and maker, that the maker should have an extension of time in which to pay the note "to about the first of April, 1877." *Held*, That the indorser waived demand, and notice of the non-payment of the note.

Error to the District Court of Fairfield County.

DICKMAN, J.—The plaintiff in error, William H. McMonigal, commenced his original action in the of Court Common Pleas of Fairfield County, against the defendant in error, John W. Brown. In his petition he alleged "that on the 16th of January, 1877, one George T. Gould, by the name of G. T. Gould, made and delivered to said John W. Brown, his certain promissory note for the sum of $593.52, with interest at 8 per cent; that said note was due and payable one day after its said date; that afterwards, to wit, on the 9th day of March, A. D. 1877, said John W. Brown, as the payee of said note, and for a valuable consideration then received by him from the plaintiff, indorsed, transferred, assigned and delivered said note to the plaintiff, and it was then and there mutually agreed between the defendant and said Gould and the plaintiff, that said Gould should have an extension of time in which to pay said note, which indulgence was to no certain date, but to about the 1st of April, 1877, and defendant thereby waived formal demand and notice of the non-payment of said note by said Gould."

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The Court of Common Pleas rendered final judgment for the defendant on a demurrer to the petition, and the judgment was affirmed by the District Court.

It is contended in behalf of the defendant in error that no cause of action was stated in the original petition because it contained no averment of demand of payment from the maker, and notice of non-payment to the indorser; while it is claimed by the plaintiff in error that if demand and notice were ever necessary, they were waived under and by the facts set forth in the pleading.

A waiver of demand and notice may be either verbal or in writing. It may be expressed *totidem verbis*, or implied from the words or acts of the party. It may be shown from circumstances or may result from an understanding between the parties, which is of a character to satisfy the mind that a waiver is intended. Any agreement between the parties to negotiable paper, or language of the indorser calculated to put a holder of reasonable prudence off his guard, and induce him not to make demand or give notice of dishonor, will obviate the necessity of taking those steps. Fuller v. McDonald, 8 Greenl., 213; Boyd v. Bank of Toledo, 32 Ohio St., 526; see also Moyer's Appeal, 87 Penn. St., 129.

It has accordingly been held by high authority that, where the indorser by agreement with the holder before the maturity of the note, agrees to extend the time of payment, there is a waiver of all demand and notice. Amoskeag Bank v. Moore, 37 N. H., 539; Ridgway v. Day, 13 Penn. St., 208. And we see no good reason why the same rule should not, for the most part, apply where an extension of time or forbearance is granted by an agreement between the indorser, holder, and maker, after the maturity of the note. See Hudson v. Wolcott, 39 Ohio St., 618.

It is said by Parsons (1 N. & B., 504): "The expression 'waiver' of demand and notice after maturity though often used, is somewhat inaccurate. Properly speaking, demand and notice can only be waived before maturity; but the party may, by words or acts subsequent to that time, relieve the plaintiff from the necessity of proving demand and notice, or render the fact that no demand was made or notice given entirely immaterial."

To charge an indorser on a note negotiated after it is overdue, demand must be made upon the maker, and notice given to the indorser, within a reasonable time after indorsement, unless such demand and notice are waived by the indorser. Bassenhorst v. Wilby, 45 Ohio St., —; Sanborn v. Southard, 25 Maine, 409; Tyler v. Young, 30 Penn. St., 143; Beebe v. Brooks, 12 Cal., 308. What is a reasonable time in which to demand payment, when a note is negotiated after it is due must be determined by the circumstances of each case; but, it has been laid down by a number of the authorities, that if parties reside in the same place, the instrument should be presented for payment the next day after it is received *at furthest;* and that where the maker of the note resides in a different place from the indorsee, it would be deemed an unreasonable delay for the indorsee to neglect to forward the instrument for demand the next day after receiving it. Byle on Bills, (7 Am. Ed., by Sharswood,) 212-13; Piner v. Clary, 17 B. Mon., 645; Thomson on Bills, 297; Chitty on Bills, (N. Y. Ed., 1830,) 271; Dan. Neg. Inst., sec. 605.

The note upon which the original action was founded, was past due when indorsed, but the facts stated in the original petition plainly indicate that the indorser did not intend to avail himself of any advantage he might derive from want of demand or notice at the maturity of the note. After the maturity of the note, and at the time of his indorsement, he was well aware that the maker was then unable to pay it, and that a presentment of the note for payment then would be useless. And it is evident from the indulgence given for the payment of the note, that the indorser, if he ever contemplated demand and notice, certainly waived them until the expiration of many days after his indorsement. It is not to be presumed that he relied upon a presentment for payment within the time during which he and the holder had virtually dispensed with payment, namely, between the date of the indorsement and "about the first of April." Hudson v. Wolcott, 39 Ohio St., 618. While, therefore, it is manifest that the indorser treated the failure to present the note at maturity for payment, and to give notice of dishonor as unnecessary and immaterial, he also clearly waived the necessity of taking the same steps until a considerable period should elapse after the maturity and indorsement of the note.

It is contended, however, that a new time of payment was fixed by the extension to "about the 1st of April, 1877;" and that demand and notice within a reasonable time after the 1st of April were necessary in order to make the indorser liable. The extension to "about the 1st of April, 1877," in our view, designated a time so indefinite as to be calculated to mislead the indorsee, and put him in doubt and off his guard in protecting his rights as against the indorser. It was beyond the power of the indorsee to determine definitely when the note was payable by the terms of the extension. To charge a drawer or indorser demand should be made on the day of the maturity of the note or bill. If made before the note or bill falls due, it is unavailing; and if made after, it is generally insufficient for the purpose of charging the drawer or indorser. The defendant in error, having contributed towards rendering the holder of the note incapable of definitely determining the day of payment, and of strictly complying with the rules of commercial law in respect to demand and notice, he is to be held as intending to waive such compliance. We have not been able to reach the conclusion that the indorser, after having received a valuable consideration, designed to place his indorsee in a situation of doubt and uncertainty, and afterwards to hold him rigidly to the requirement of demand and notice, in order that he might evade an indorser's liability.

We are of opinion, therefore, that the District Court erred in affirming the judgment of the Court of Common Pleas, and that the judgments of those courts should be reversed, and the cause remanded for further proceedings.

MERE surplusage will not vitiate a complaint or indictment, and need not be proved.

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MARYLAND COURT OF APPEALS.

CENTRAL RAILWAY CO. v. PEACOCK.

Decided June 13, 1888.

A passenger on railway car alighted from the car under circumstances not indicating his purpose to return. The driver of the car pursued and struck him, inflicting injuries. This conduct of the driver not being within the sphere of his duty or the scope of his authority as an employee of the railway company, and the passenger having ended his relation as passenger, the railway company is not responsible for the injuries.

Appeal from Baltimore City Court.

T. W. BLAKISTONE and GEO. BLAKISTONE, for appellant.

JOSEPH POLLARD and H. W. LATANE, for appellee.

IRVING, J.—This is a suit for personal injuries received by the appellee at the hands of the conductor and driver of the appellant's street car, at a time when the appellee contends he was a passenger, and as such entitled to the protection of the appellant from the violence of its employees.

The questions in the case are: Was there such evidence in the case of the appellee being a passenger of appellant when the assault was committed, and of the conductor acting in the line of his duty and scope of his employment, as justified the court in refusing the prayer of appellant that there was no legally sufficient evidence in the cause to enable the jury to find for the plaintiff?

The evidence shows that the appellee entered the appellant's car at the corner of Broadway and Lancaster streets, intending to ride to the corner of Preston and North streets, near which the appellee lived, and to which point he was accustomed to ride on the defendant's cars, and had been almost daily in the habit of riding for several years in returning from his work. On this occasion as the car turned into Preston street several ladies got into the car, and as it was full the appellee arose and gave his seat to a lady and stood in front of the seat which he had occupied. Whilst he was so standing the driver, who was also conductor and the only officer of the car, opened the door and said to appellee; "Captain, I want you to sit down." The appellee replied, "I have given my seat to this lady, and there is no other; when I can get a seat I will sit down." To this the driver replied with profane and abusive language, and told the plaintiff (the appellee) that if he would get off the car he would fight him. To this the appellee simply replied, "When we get to the office of the company I will report you." The office of the company, according to the proof, was at the stables where the car stopped for a change of horses, which the appellee knew. It was on the south side of Preston street, west of Greenmount avenue, six blocks west of Caroline street, and about one block east of North street. The entrance to the office was on Barclay street. Just after the car crossed Greenmount avenue and at its west side it was stopped for some ladies to get off. The appellee also got off at that point, intending, as he said, to go to the office of the company (which was not yet reached) and report the driver while the horses were being changed, and then to resume his seat in the car. The car started on again and the driver, seeing the appellee going towards the office, again stopped the car before it had quite reached the point for stopping to change horses, and jumped from the front platform with the iron brake belonging to the car in his hand, and went straight across the street and intercepted the plaintiff on the public sidewalk, at the mouth of an alley which runs south from Preston street, and exclaiming to the appellee "God damn you, I'll give you something to report," struck him twice with the brake. The first blow felled him to his knees, when the conductor struck him again, and was prevented from giving a third blow by being seized by a police officer. Both blows were on the appellee's head, and he was considerably hurt. Appellant admits that if the appellee was a passenger at the time, the company was bound to protect him from injury from its employees or the ill usage of strangers in the vehicle; but the appellant contends that not only had the appellee ceased to be a passenger but that the driver by stopping the car and leaving the horses standing in the street, and proceeding to the sidewalk to assault the appellee, violated his duty and stepped aside from the line and scope of his employment, and that consequently the appellant was not answerable for his conduct.

Judge Cooley, in his work on Torts, page 535, says, "the liability of the master for intentional acts which constitute legal wrongs can only arise when that which is done within the real or apparent scope of the master's business. It does not arise when the servant has stepped aside from his employment to commit a tort which the master neither in fact directed nor could be supposed, from the nature of the appointment, to have authorized or expected the servant to do." He illustrates his meaning by this statement, "so if the conductor of a train of cars leaves his train to beat a personal enemy, or from mere wantonness to inflict an injury, the difference between that and when a passenger is ejected from the cars is obvious; the one is a trespass he has stepped aside to commit; the other is committed in the course of his employment." The statement of the law by this eminent jurist seems to be supported by direct decision. (Croker v. New London R. R. Co., 24 Conn., 249; Pittsburg & R. R. Co. v. Daraleive, 70 Pa. St., 119; Evansville R. R. Co. v. Bunn, 26 Ind., 70; Wright v. Wilcox, 19 Wend., 343.)

The Supreme Court of the United States, in Steamboat Co. v. Brockett, 121 U. S., 645, decided unequivocally that the carrier of passengers must protect his passengers from the violence of the carrier's employees as also from that of other passengers; but there is nothing in the decision in conflict with the doctrine that to render it liable the employee must be at the time acting in the employment of the railroad, and within the line of his duty, and the decision assumes that the party injured is a passenger when injured; for that was the fact in the case. That case only decides that the carrier is liable for the act of his servant engaged in the act of executing the contract for the transport of the passenger. To bring this case within the operation of the rule there laid down, and no doubt

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rightly, it should appear from the proof that appellee was a passenger at the time and that the driver was executing the contract for transportation.

When the appellee entered their street car it does not appear that he had a ticket to any particular point. Upon entering the car, according to the well understood arrangement, the carrier was bound to take the passenger for the stipulated fare to any point within the termini of the road where he might desire to alight. Whenever the passenger did alight that contract was at an end, unless his alighting was well understood by the carrier's agent to be rightful and temporary, and that he was to resume his seat. He says he alighted for a purpose and intended to resume his place in the car and continue his journey; but this purpose was not communicated to or assented to by the driver and conductor. After he had alighted and walked a square could he resume his place in the car without paying another fare, without the consent of the conductor? Would the conductor be justified in omitting to demand another fare? We think not. Had he remained in the car until the stables were reached and the horses were being changed, the conductor would have understood his journey was not completed, and whilst the horses were being changed he would still have been regarded as a passenger and would have been entitled to protection as against the employers, if he then had gone into the office to execute his declared purpose to report, if 88 Illinois, 608; 39 Indiana, 568, and 58 Maine, 176, correctly lay down the law. Those cases only establish that while the car or boat may actually stop, the passenger need not confine himself to the boat, car or vehicle in order to preserve his relation and rights as a passenger. But that is not the case here; the appellee voluntarily alights a square or block away from where the car will stop to change horses and takes his place with other pedestrians on the sidewalk of the street. The carrier has a right to regard his contemplated trip as ended, and contract executed. He was no longer carried as a passenger, but was walking on the street. Being discovered in this act the driver, whose conduct was most outrageous and deserved the dismissal from service which followed, stopped his horses, left his car in the street, and pursuing him inflicted the injury complained of. True he had been insulted in the car, but he was not assaulted in the car. He was not forced to leave the car or ejected from it. He voluntarily left when a place was made for him to sit down, by several ladies leaving the car. No matter what his intention was as to resuming his place and finishing his contemplated journey it was not announced nor assented to. The contract was to carry him as long as he stayed in the car to the end of the route—not to let him ride and walk alternately, as he chose. Whilst the contract of carriage continues the passenger must, to some extent, be subject to the carrier's control. The liability for his safety and even for his conduct to co-passengers so requires. When he left the car the carrier was certainly not liable for his conduct on the street. nor for the conduct of a stranger to him on the street. Why then should the appellant be answerable for the assault of its driver who actually stopped his team and left it in the street, with the passengers unguarded, in order that he might pursue his victim and knock him down. In doing this he cannot be regarded as acting within the sphere of his duty or scope of his authority. He left and stepped aside from both in order to gratify his spleen, and upon the authorities already cited we cannot doubt that it was error to hold the appellant responsible.

The first prayer of the appellant ought to have been granted, and the case taken from the jury; it follows, of course, that the plaintiff's prayers were erroneously granted.

Judgment reversed.—*Maryland Law Journal.*

Book Notice.

A treatise on the Law of Contracts by Married Women, their capacity to contract in relation to their separate statutory legal estates under American Statutes. By George E. Harris, ex-member of Congress and late Attorney General of Mississippi. Banks & Brothers, publishers, Albany and New York. Price $6.00 net. Apply to Geo. E. Harris. No. 1214 H street N. W., Washington D. C.

The volume before us contains 628 pages of text divided into 48 chapters and 815 sections. There is an appendix of the Statutes of all the States, Territories and District, which confer upon married women powers to contract. The table of contents and index are full and show exhaustive labor on the part of the author. Mr. Harris does not pretend to discuss the general law of contracts or the laws and rights of married women generally, but devotes his careful attention to her power and capacity to contract in relation to her separate estate created by statute, and the mode of enforcing such contracts, her power of acquisition by contract, her dominion over her separate legal estate, her power to deal with it, to charge, bind, pledge or incumber it, and finally her power of alienation by contract. The author does not claim to deal with questions of expediency or propriety, or to criticise the decisions of the courts, but to place the law in a tangible form before the professional reader. We are sorry we have not had time to give the body of the work the thorough examination the importance of the subject and the evident care of the author warrant. After a brief though close inspection we feel justified in praising the arrangement, style and labor bestowed generally and have no doubt but that it will be a valuable acquisition to a first class library.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

July 9.

11239. Benjamin F. Franklin, for minor children. To appoint guardian, &c. Com. sol., W. A. Cook.

11240. Mary M. A. Gibson v. Horatio G. Schissler. To perfect title. Com. sol., F. P. B. Sands.

11241. Johannah Hethermann v. John Hethermann. For divorce. Com. sol., W. B. Snell.

July 11.

11242. Harvey Spalding v. The District of Columbia. Injunction to remove cloud from title. Com. sol., W. Willoughby.

11243. William H. Marshall et al. v. Hattie Marshall et al. For sale of real estate. Com. sol., Eugene F. Arnold.

11244. Alice C. Hall v. James R. Hall. For divorce. Com. sols., Edwards & Barnard.

11245. Mary M. Frick v. H. C. Alleman, surviving trustee. Com. sols., Coleman, Offley and Metcalf.

11246. Julia Ann Powell v. William Powell. For divorce. Com. sol., R. S. Smith.

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11247. Catherine D. Hughes v. Richard B. Hughes. For divorce. Com. sol., William A. Cook.

July 13.

11248. John H. B. Latrobe v. Henry E. McKee et al. Injunction. Com. sol., Reginald Fendall.

11249. Wilhelmina K. McDermott v. Charles Mades. For account. Com. sol., M. J. Colbert.

11250. Margaret Clark et al. v. Alberta M. King et al. To make partition of real estate. Com. sol., B. F. Leighton.

July 14.

11251. James A. Cooper v. W. Harvey Olcott. To dissolve partnership. Com. sol., Chapin Brown.

11252. O'Reilly v. O'Reilly. Com. sol., F. P. B. Sands.

CIRCUIT COURT.—New Suits at Law.

July 9.

28807. James H. Baer v. William H. Welsh. Note, $105.65. Plffs attys, Garnett and Mackall.

July 10.

28808. William H. Dempsey v. Richard B. Porter. Judgment of Justice O'Neal, $68.

28809. James M. Johnston, trustee, v. Robert Hutchinson. Account rent, $60. Plffs atty, William G. Johnson.

28810. John Murray v. Otto C. Ruppert. Appeal. Deft atty, J. G. Bigelow.

July 11.

28811. Robert C. Hewett v. John White. Notes, $6,176.26. Plffs atty, William A. Cook.

July 12.

28812. Emma Sullivan et al. v. Patrick J. Power et al. Ejectment. Plffs attys, Brown and Willoughby.

28813. Charles J. Carroll v. Robert E. L. White. Replevin. Plffs attys, Garnett and Mackall.

28814. Thomas G. Carroll v. Same. Replevin. Plffs attys, Same.

28815. Frank Hume v. Ignatius G. Glorius. Judgment of Justice Bundy, $50.45. Plffs atty, R. Willson.

28816. Eldred G. Davis v. Reuben H. Andrews. Judgment of Justice Helmick, $31.69. Plffs atty, John Ridout.

28817. James Nolan v. Charles Entwisle. Judgment of Justice Bundy, $100. Plffs atty, Same.

July 13.

28818. Henry A. Willard v. Sophie B. Flemming. Account rent, $150. Plffs attys, Cole & Cole.

28819. The United States, ex rel. R. Mason Lisle, Lieutenant, U. S. N. (retired), v. C. M. Shelley, Fourth Auditor, Treasury Department. Mandamus. Plffs atty, H. C. Clagett.

28820. Wilcox & Gibbs Sewing Machine Co. v. De Witt C. Sprague et al. Replevin. Plffs attys, Merriman and Weed.

28821. The Sisters of the Visitation of Washington v. Ann Joyce. Account, $507.10. Plffs attys, Hamilton and Colbert.

July 14.

28822. Henry J. Kentz v. Albert Bouldin. Judgment of Justice Bundy, $100.

28823. Conrad Allis et al. v. The Columbian University. Damages, $5,000. Plffs atty, F. H. Mackey.

July 16.

28824. The Peoples' Savings Bank v. Frank B. Conger. Notes, $5,000. Plffs atty, J. K. Redington.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James F. Shea v. Sallie Shea et al. } No. 11185. Equity.

The trustees herein, having reported a sale of the south forty (40) feet front, by depth thereof, of lot seven (7), in square two hundred and sixty-three (263), in the City of Washington, in the District of Columbia, for $6,115. It is, this 18th day of July, 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 3d day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.
29 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 13th day of July, 1888.

Clara A. Beale v. Edward M. Beale. } No. 11191. Eq. Docket 28.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, Edward M. Beale, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of adultery.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Martin O'Donoghue, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

MARGARET O'DONOGHUE,
Adm'x, 28th and O sts. n. w.
29 C. A. Elliot, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Elizabeth Dozier, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1888.

WILLIAM A. GORDON, Adm'r, 330 4½ st. n. w.
29 No. 3150. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
6th day of July, 1888.

Gussie Lavinia Cox v. Eugene R. Cox. } 11189. Equity Docket 28.

On motion of the complainant, by Charles S. Wilson, her attorney, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this bill is a divorce *a vinculo*. Notice to be published in the WASHINGTON LAW REPORTER and the *Critic*.

By the Court. W. S. COX, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Jackson Lackey, late of the State of Texas, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

JAS. S. EDWARDS, Adm'r, 500 5th st. n. w.
29 No. 3122. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(Filed July 17, 1888.)

Daniel Leughran v. Mary Cunningham et al. } Eq. No. 11200.

It is ordered this 17th day of July, A. D. 1888, that the sale of the real estate described in these proceedings to Margaret A. Fegan and reported by the trustee, be and it is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

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Legal Notices.

CHANCERY SALE OF VALUABLE REAL ESTATE, FRONTING ONE HUNDRED AND SIXTY-FIVE FEET ON THE WEST SIDE OF VERMONT AVENUE, AND IMPROVED BY A MAGNIFICENT RESIDENCE, KNOWN AS NO. 1120 VERMONT AVENUE, NEAR THOMAS CIRCLE.

By virtue of a degree of the Supreme Court of the District of Columbia, passed on the 27th day of June, 1888, in Equity Cause No. 10783, of C. D. Fowler, administrator, and others against George Taylor and others, we will, in front of said premises, on FRIDAY, the TWENTIETH DAY OF JULY, 1888, at FIVE O'CLOCK, P. M., sell at public auction, to the highest bidder, all the right, title and interest of the said George Taylor in and to the following described real estate, to wit: Lots numbered from forty-nine (49) to sixty (60), both inclusive, and the south fifteen $\frac{1}{100}$ (15.41) feet front on Vermont avenue of lot numbered forty-eight (48), by the full depth thereof, all in the said George Taylor's subdivision of part of square numbered two hundred and fourteen (214), on the plat or plan of the City of Washington, in the District of Columbia, as per plat recorded in Liber W. B. M., folio 185, of the records of the Surveyor's office, D. C., being the property now occupied by the said Taylor, on the west side of Vermont avenue, opposite "The Portland Flats."

Said sale will be made subject to a deed of trust made by said George Taylor and wife to R. W. Tyler and R. G. Rutherford, of record in the land records of said District in Liber No. 1136, at folio 47 et seq. The following notes secured by said trust remain unpaid, to wit: One principal note for sixty thousand dollars ($60,000), which matures on the 23d day of July, 1888, and two notes for interest on the note first above mentioned, each for the sum of eighteen hundred dollars, one of which matured on the 23d day of January, 1888, and the other will mature on the 23d day of July, 1888.

Terms of sale: One-third ($\frac{1}{3}$) of the purchase money cash in hand, and the residue in two equal installments on a credit of one and two years respectively from the day of sale, and the purchaser will be required to give his notes for the deferred installments of purchase money, bearing date the day of sale, due in one and two years respectively thereafter, with interest at 6 per cent. from date until paid, payable semi-annually, and to give such security for the payment thereof as may be satisfactory to the undersigned or approved by the court; or the purchaser may pay all cash, at his option. A deposit of $500 will be required on the day of sale, and the purchaser will be required to fully comply with the terms of sale within ten days thereafter, or the property will be resold at his risk and costs.

All conveyancing at purchaser's cost.

WILLIAM TAYLOE SNYDER,
Trustee,
Corcoran Building.
CHARLES C. COLE,
Trustee,
28 Fendall Building.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, 1888.

James Edward Green et al. v. Sarah J. Kennedy et al. } No. 11187. Docket 28.

On motion of the complainants, by Mr. Thomas M. Fields, their solicitor, it is ordered that the respondents, Annie E. Bidwell, John Bidwell, Guy R. Kennedy, Joseph J. E. Kennedy, and Cora W. Kennedy (for whom summonses have been issued and duly returned "not to be found"), cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to execute trusts created by deed recorded in Liber 986, folio 354, *et seq.* one of the land records of the District of Columbia, by appointment of a trustee, sale of property, statement of accounts, &c.

By the Court. E. F. BINGHAM, Chief Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Clementina Pleasonton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1888.

LAURA PLEASONTON, Ex'x, 1341 L st. n. w.
Frank W. Hackett, Jno. F. Ennis, Proctors.
28 No. 3143. Ad. D. 14.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of July, 1888.

Augustus W. Daily v. Rachel Daily. } No. 11116. Docket 28.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1888.

Arthur Herbert et al. v. John Sibley, Anthony Brenner, Trustee, } No. 11212. Eq. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendant, Anthony Brenner, Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain the appointment of a trustee in place of said Anthony Brenner, under a deed of trust recorded in Liber N. C. T. 57, folio 147, of the land records of the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1888.

George W. Smith v. Mary E. Smith. } No. 11162. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Mary E. Smith, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree of divorce from the bond of matrimony on the ground of the desertion of the plaintiff by the defendant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of July, 1888.

Charles H. Wood v. Ella J. Wood. } No. 11220. Eq. Docket 28.

On motion of the plaintiff, by Mr. W. T. Johnson, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

(Filed July 17, 1888.)

Milton H. Gettinger v. William Gettinger et al. } 11211. Eq. Docket 28.

Ordered this 17th day of July, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee of the real estate described in the said report, filed the 17th day of July instant, be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,575.00.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
July 6th, 1888.

In the case of John M. Mitchell, Administrator of Henry Striker, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 27th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
28 No. 2763. Ad. D. 13. Leon Tobriner, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
July 6th, 1888.

In the case of Arthur T. Brice, Administrator of Arthur Shaaff, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 27th day of July, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.
28 No. 7676 Old Series. Ad. D. 7.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of July, 1888.

Emma Johnson. v. John H. Cook et al. } No. 11119. Eq. Docket 28.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendants, William M. Cook, Joseph T. Settle, and John H. Cook, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the deed of trust dated on the 3d day of June, 1872, and recorded in Liber 691, folio 164, released. The said deed having been given by Emma Johnson and her husband to John H. Cook, senior, Trustee, now deceased, to secure defendant Settle in the payment of $250.00. It being claimed that said indebtedness has been paid.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of July, 1888.

Lewis W. Hollinberger et al. v. William Cowell et al. } No. 11183. Docket 28.

On motion of the plaintiffs, by Messrs. McGrew & Small, their solicitors, it is ordered that the defendants, William W. Cowell, William Makepeace, Ebenezer C. Millett, Parthenia Durant, Phebe Morrill, Mary Walker, sr., Mary Walker, jr., Society for Increase of the Ministry, Sarah B. Wild, Sarah E. Millett, Eliza H. Smith, Mary T. Derby, and Lucretia Townsend, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud on title to lots 68 and 69 Groff's subdivision, square 867, and lots 34, 37, 38, 39, 40, 41, 42, 43, 44, and 45, of Linvilles' subdivision, square 867.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Ludolph Friederich, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of May next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of May, 1888.
MARY E. MILLS, Adm'x c. t. a., 617 12th st. n. e.
28 No. 3071. Ad. D. 14. Irving Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of David Dreyfuss, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1888.
BABETTE DREYFUSS, Ex'x, 3292 M st. n. w.
28 No. 3141. Ad. D. 14. I. W. Nordlinger, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 10th day of July, 1888.

Amanda Winfree v. Hannibal Winfree. } No. 11147. Eq. Docket 28.

On motion of the plaintiff, by Mr. William C. Martin, her solicitor, it is ordered that the defendant causes his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto; and further, that the said plaintiff may have the care and custody of their child. The ground for said dissolution of said bond of matrimony is willful desertion and abandonment.

By the Court. E. F. BINGHAM, Chief Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of July, A. D. 1888.

Charles Baker v. Mary Ann Baker. } No. 11193. Docket 28.

On motion of the plaintiff, by Mr. Fred. W. Jones, his solicitor, it is ordered that the defendant, Mary Ann Baker, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER and the *Washington Critic* once a week for three successive weeks before said rule-day.

The object of this suit is for divorce from the bonds of matrimony, on the ground of willful desertion and abandonment by the defendant of the plaintiff for the full uninterrupted space of two years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
July 11th, 1888.

In the matter of the Estate of Robert Moore, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the Estate of the said deceased has this day been made by A. P. Lacy.

All persons interested are hereby notified to appear in this Court on Friday, the 3d day of August next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
28 Test: DORSEY CLAGETT, Register of Wills.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 7th day of July, 1888.

Augustus W. Daily
v.
Rachel Daily. } No. 11116. Docket 28.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 6th day of July, 1888.

Arthur Herbert et al.
v.
John Sibley, Anthony Brenner, Trustee. } No. 11212. Eq. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendant, Anthony Brenner, Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain the appointment of a trustee in place of said Anthony Brenner, under a deed of trust recorded in Liber N. C. T. 57, folio 147, of the land records of the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Jonathan Kirkwood, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of July, 1888.
THOMAS McGILL, Ex'r, 1107 E st. n. w.
28 No. 3062. Ad. D. 14. John Ridout, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(Filed July 17, 1888.)

Milton H. Gettinger
v.
William Gettinger et al. } 11211. Eq. Docket 28.

Ordered this 17th day of July, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee of the real estate described in the said report, filed the 17th day of July instant, be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,575.00.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Joseph E. Johnston.
v.
Henry B. McLane et al. } Equity No. 10923.

The Trustee in above cause having reported the sale of the real estate in the proceedings named, to wit, lot numbered thirty-three (33) in Shepherd and Kirby's recorded subdivision of square numbered one hundred and sixty-four (164), as recorded in Surveyor's Liber J. H. K., page 137, at and for the sum of twelve thousand one hundred ($12,100) dollars, it is, this twenty-ninth day of June, A. D. 1888, ordered and decreed by the Court that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the thirtieth day of July, A. D. 1888.

Provided that a copy of the above order be published in the Washington Law Reporter once a week for three successive weeks before said 30th day of July, A. D. 1888.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
27 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 14th day of July, 1888.

Charles H. Wood
v.
Ella J. Wood. } No. 11220. Eq. Docket 28.

On motion of the plaintiff, by Mr. W. T. Johnson, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Charles Hartel, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of June, 1888.
EMILIE HARTEL, Ex'x, 314 C st. s. e.
28 No. 3132. Ad. D. 14. Saml. C. Mills, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 2d day of July, 1888.

Sarah Ann Lockwood.
v.
Agnes Bolden Place et al. } No. 11134. Docket 28.

Upon hearing of the Trustees' report filed herein, it is, this 2d day of July, A. D. 1888, ordered that the sale herein reported be, and it hereby is, ratified and confirmed, unless cause thereof to the contrary be shown on or before the 1st day of August, A. D. 1888.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
27 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 6th day of July, 1888.

George W. Smith
v.
Mary E. Smith. } No. 11162. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Mary E. Smith, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree of divorce from the bond of matrimony on the ground of the desertion of the plaintiff by the defendant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William H. Bergman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of June, 1888.
MARY O. BERGMAN, Ex'x, 1251 6th st. n. w.
28 No. 3131. Ad. D. 14. A. C. Richards, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary, on the personal estate of Angela or Angelina Gatto, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of July, 1888.
PAUL BONAVIRES, Ex'r, 1202 Pa. ave. n. w.
28 Francis Toumey, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Catherine Wilson, Guardian,
v.
Catherine Miller, otherwise known as and called Daisy Miller et al. } No. 11073. Equity.

Edward A. Newman, the Trustee appointed herein, having reported the sales of the following described real estate situate in the city of Washington and District of Columbia, to wit, lot numbered 36 in the recorded subdivision of original lots 15, 16, 17, 18, and 19, in square numbered 204, fronting 20 feet on the west side of 14th street west, between U and V streets north, and running back 138 feet 6 inches to an alley, unimproved, containing 2,770 square feet, at and for the sum of one dollar and fifty-two cents per square foot, amounting to $4,210.40, to Richard T. Pettit, and all that part of lot numbered 16, in square numbered 551, situate in said city and District, beginning for said part at the northeastern corner of said lot and running thence south 130 feet, thence west 16 feet 4½ inches, thence north 130 feet, thence east 16 feet 4½ inches to the beginning, improved by a two-story frame house, to Charles F. F. Rosenthal, at and for the sum of $1,825.00, it is, therefore this 29th day of June, 1888, ordered that said sales be finally ratified and confirmed, unless cause to the contrary be shown or before the 30th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date.

The said sales aggregate $5,535.40.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
27 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Sitting in Equity.

June 27, 1888.

Zachariah Coleman
v.
Abraham Gibson. } 10949. Eq. Doc. 27.

Walter B. Williams, Trustee, having reported to the Court the sale of sub-lot 53, in J. W. Jones' subdivision of square 545, as the same is recorded in Liber N-K., folio 267, of the records of the Surveyor's office of the District of Columbia, under the terms of sale as set forth under a decree rendered in this suit on the 23d of March, 1888, and it further appearing from said report that Charles Ford became the purchaser of said property, at public auction, for the sum of $690.00, it is, by the Court, this 27th day of June, ordered and decreed that the said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 27th day of July, 1888.

Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said 27th day of July, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,
26 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of July, 1888.

Saul S. Henkle, Trustee,
v.
William J. Murtagh,
George B. Wilson et al. } No. 11196. Equity Docket 28.

On motion of the plaintiff, by Mr. William J. Miller, his solicitor, it is ordered that the defendants, Wilmer S. Shepherd and Alexander R. Shepherd, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a deed of trust from said defendants, George B. Wilson and wife, to said defendant, Wilmer S. Shepherd, to secure the payment of certain promissory notes to defendant, Alexander R. Shepherd, declared paid and satisfied, and for the appointment of a trustee in place of said William S. Shepherd, to release and discharge said deed of trust. And also the object of said suit is to correct errors in the recording of deeds from said George B. Wilson and wife to said Wilmer S. Shepherd, and also the recording of the deeds from defendants, George M. Robeson and wife and Brainard H. Warner and wife to said plaintiff, Saul S. Henkle.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
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U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
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WASHINGTON, D. C. - - - - AUGUST 1, 1888

Negligence Causing Damage by Terror.

Does an action lie for negligence causing damage by terror, and occasioning nervous or mental shock, unaccompanied by "impact"? This was the question the Privy Council were called on to determine in The Victorian Railway Commissioners v. Coultas and Wife, reported in the current number of the *Law Journal*; but counsel were unable to produce any decisions of the English courts in which damages were recovered under such circumstances. They did, indeed, refer to the American case of Vanderburgh v. Truax (4 Denis, 464), decided by the Supreme Court of New York, which, by the way, Mr. Pollock, in his work on Torts, observes is generally accepted as good law; but, as was indicated in the judgment of the Privy Council, that was a case of palpable injury caused by a boy, who was frightened by the defendant's violence, seeking to escape from it, and is merely like the case of Sneesby v. The Lancashire and Yorkshire Ry. Co. (1 Q. B. D., 42). Referring generally, however, to the numerous decisions collected in our papers on "Remoteness of Consequential Damage," in Volume XV, we shall here merely add that the American case of Canning v. Williamstown (1 Cush., 451,) would have been found more in point, holding that a verdict, founded on fright and mental suffering, caused by risks and perils, would, in the absence of personal injury, be contrary to law; and so, see Wyman v. Leavitt, 23 Alb., L. J., 253; Johnson v. Wells, 6 Nev., 224. While, as regards English cases, the one most nearly in point that we can discover is Coombe and Wife v. Moore, referred to in Vol. XV, p. 227, where the action was brought to recover damages occasioned by the fall of rockets in the plaintiff's garden, which so alarmed the plaintiff's wife that she was attacked by hysteria, upon which neuralgia supervened. Nor should we forget (as the Privy Council appear to have done) that it was laid down by the House of Lords, in Lynch v. Knight, that "mental pain and anxiety the law cannot value, and does not pretend to redress when the unlawful act complained of causes that alone."

Now, in the case under notice, which came before Lords Fitzgerald and Hobhouse, Sir Barnes Peacock, and Sir Richard Couch, on an appeal from a judgment of the Supreme Court of the Colony of Victoria, the action was brought to recover damages for a severe shock and injuries sustained by the respondent, Mary Coultas, through the appellants' negligence, whereby the respondents were placed in imminent peril of being killed, by a train of the appellants, whilst driving over the Swan street level crossing, at Richmond East, on the 8th of May, 1886, and for losses and expenses incurred by the respondent, James Coultas, through the illness of his wife, the first mentioned respondent. The appellants, by their defense, denied the alleged negligence; and, further, stated that the respondents were not lawfully on the crossing, and were guilty of contributory negligence; and they further contended that no cause of action was disclosed by the statement of claim, as it was not stated that either the respondents or their property were struck or touched by the train of the appellants; and that it only showed negligence without injury. They further contended that the alleged damages arising from shock or fright without impact were too remote to sustain the action.

At the trial of the action the following facts appeared in evidence:—On the 8th of May, 1886, the respondent, James Coultas, accompanied by his wife, the respondent, Mary Coultas, was returning from Melbourne to Hawthorn in a buggy. The night was dark and rainy. They reached Swan street level crossing at a few minutes past 9 p. m., Richmond side. The gates were shut. The respondent, James Coultas, could not see across to the other side. The gate-keeper came out, and opening the near gates to him said "All right," and walked on across the line to the gates on the opposite side. The respondent followed after him in the buggy, three of four yards behind him. The gate-keeper had a lamp in his hand. The respondents got partly on to the far line, on the up line, when the gate-keeper suddenly turned around with his lamp and said, "For Heaven's sake go back; the train is coming." The defendant, James Coultas, looked and saw the train approaching from Hawthorn, and said, "Open the gate. Quick." It was safer to go on, as the respondent could not turn the buggy in time to go back. The gate-keeper ran to the gates and tried to open the far side gate but did not succeed. He then opened the near half of the gate. The respondent, James Coultas, then turned round the end of the gate, and got out with the buggy. When the train passed, it was close to the back of the buggy, the buggy being inside the gate. As the train approached Mary Coultas fainted, and fell forward in her brother's arms. The medical evidence showed that she received a severe nervous shock from the fright, and that the illness from which she afterwards suffered was the consequence of the fright. One of the plaintiffs' witnesses said she was suffering from profound impression on the nervous system, nervous shock and the shock from which she suffered would be a natural consequence of the fright. Another said he was unable to detect any physical damage: he put down her symptons to nervous shock. The jury found that the defendants' servant negligently opened the gate and invited the plaintiff to drive over the level crossing when it was dangerous to do so, and that the plaintiffs could not have avoided what had occurred by the exercise of ordinary care and caution on their part. And they assessed the male plaintiff's damages at £342 2s, and the female plaintiff's at £400, leave being granted to either side to move for judgment after the full court had decided points reserved. The points reserved were: 1. Whether the damages awarded by the jury to the plaintiffs, or either of them, are too remote to be recovered? 2. Whether proof of "impact" is necessary in order to entitle plaintiffs to maintain the action? 3. Whether the female plain-

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tiff can recover damages for physical or mental injuries, or both, occasioned by fright caused by the negligent acts of the defendants? The full court, consisting of Mr. Justice Williams and two other judges, answered that the damages awarded were not too remote to be recovered; that proof of "impact" was not necessary; and that the female plaintiff could recover damages for physical and mental injuries occasioned by the fright. Thereupon judgment was entered for the plaintiffs for the amounts awarded, and the present appeal was from that judgment.

No doubt, through the negligence of the defendants' servant in charge of the crossing, the plaintiffs had been placed in imminent peril; and as was said by Lord Ellenborough, in Jones v. Boyce (referred to, among various other cases of the kind, in vol. XX, p. 531), on which the plaintiffs' counsel relied, "if I place a man in such a position that he must adopt a perilous alternative, I am responsible for the consequences." But, those consequences must be such as in the ordinary course of things would flow as the natural and reasonable result of the defendants' act; see The Notting Hill, 9 P. D., 105; and here the Privy Council were rightly of opinion that the first question, whether the damages were too remote should have been answered in the affirmative, and on that ground without saying that "impact" was necessary, that the judgment should have been for the defendants. "According to the evidence of the female plaintiff," said their lordships, "her fright was caused by seeing the train approaching, and thinking they were going to be killed. Damages arising from mere sudden terror, unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their lordships think, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gate-keeper. If it were held that they can, it appears to their lordships that it would be extending the liability for negligence much beyond what the liability has hitherto been held to be. Not only in such a case as the present, but in every case where an accident caused by negligence had given a person a serious nervous shock, there might be a claim for damages on account of mental injury. The difficulty which now often exists in the case of alleged physical injuries of determining whether they were caused by the negligent act would be greatly increased, and a wide field opened for imaginary claims."

"We have been unable," said the Supreme Court of Maine, in the case of Wyman v. Leavitt, to which we referred at the outset, "to find any decided case which holds that mental suffering alone, unattended by any injury to the person caused by simple actionable negligence can sustain an action. And the fact that no such case exists, and that no elementary writer asserts such a doctrine, is a strong argument against it." Too much weight, however, should not be attached to the mere absence of precedent; as Kekewich, J., remarked in Tarn v. Turner, reported in the June number of the *Law Journal*, "in such a case the usual arguments are, on the one side, that there is no reported case because the principle was never doubted, and on the other, that there is no such case because no one has ever been so foolish as to raise so barren a point." "It is remarkable," said Sir Richard Couch, in the case in hand, "that no precedent has been cited of an action similar to the present having been maintained or even instituted, and their lordships decline to establish such a precedent." The precedent the other way that they have established is sound, and, apart from its authority as only a Privy Counsel case, is entitled to command acceptance on principle.—*Irish Law Times.*

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JACOB RICH.

v.

JOSEPH SOLARI and CAMILLE SOLARI, Copartners, trading by the firm name of SOLARI BROTHERS.

Decided December 19, 1887.

The CHIEF JUSTICE and Justices HAGNER and JAMES sitting.

A debt due a partnership cannot be attached to satisfy a judgment rendered against one partner, who alone was served, in a suit commenced against both partners on a partnership contract.

Appeal from an order overruling a motion to quash an attachment.

The case is stated in the opinion.

THOMAS M. FIELDS for appellant.

N. H. MILLER and MILLER & MILLER for appellee.

Mr. Chief Justice BINGHAM delivered the opinion of the court.

The plaintiff declared, on a promissory note for $500, made and signed by the firm name of Solari Brothers, Camille Solari was served with process and filed a plea denying indebtedness, but without affidavit, under the rule. Joseph Solari was not found, and the officers so returned.

January 15, 1887, judgment was rendered against both defendants on motion of the plaintiff. February 9, 1887, this judgment was set aside on the plaintiff's motion and a judgment rendered against Camille Solari.

On the same day an attachment was sued out on the judgment and process served on the Metropolitan National Bank, with interrogatories to be answered by the garnishee. The garnishee, having answered to the first interrogatories that it had no funds of Camille Solari's and was not indebted to him, moved, for that reason, and also because a debt due a firm cannot be attached for a debt of a single member of such firm, to be discharged. March 2, 1887, the plaintiff suggested the decease of Joseph Solari after the commencement of the action and before service on him. In answer to additional interrogatories the Metropolitan Bank stated an indebtedness to Solari Brothers of $111.47.

On the 18th of March, 1887, Camille Solari filed his denial that Joseph Solari had departed this life, as suggested by the plaintiff.

On the 19th of February, 1887, Camille Solari filed his motion to discharge the attachment,

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because a debt due a firm cannot be attached on a judgment against one member of the firm.

On the 21st of March, 1887, the court entered an order overruling both motions of Camille Solari and of the garnishee to discharge the attachment. From this order Camille Solari and the garnishee took an appeal to the General Term. Camille Solari gave bond in appeal, but the garnishee did not.

The question presented by the record is: Can a debt due a partnership be attached to satisfy a judgment rendered against one partner, who alone was served, in a suit commenced against both partners on a partnership contract?

The general rule of the common law unquestionably is that a judgment against one of several persons who are jointly obligated is a merger of the cause of action as to all and may be plead in bar to a subsequent action against the joint obligors not included in it. The case of Moabe v. Hollins, decided by the Court of Appeals of Maryland in 1839, 11, G. & H., fairly illustrates the doctrine. It was there held that where a person carried on a copartnership business in his own name, but had a dormant partner, that a creditor who sued and recovered judgment against the known partner upon an obligation given for a firm debt in the course of partnership business was thereby precluded from suing the dormant partner, although he remained ignorant of the fact of copartnership until after the rendition of the judgment. Probably this decision may have suggested the enactment by the Legislature of Maryland of a statute passed subsequently providing as follows:

"A judgment rendered against one or more members of a partnership, or one or more persons jointly liable on any bill, bond, covenant, promissory note, bill of exchange, contract, or agreement whatsoever, less than the whole number of partners or persons so bound, shall not work an extinguishment or merger of the cause of action on which such judgment may have been rendered, as respects the liability of the partners or persons not bound by such judgment; and they shall remain liable to be sued as if their original responsibility had been joint and several: *Provided*, That but one satisfaction of the debt or demand shall be made." Md. Code, Art. 29, Sec. 18.

The claim made by counsel for the plaintiff in this case is that "the debt is a firm debt and the judgment is against Camille Solari as a member of the firm of Solari Brothers. His liability arises out of his firm relations, and the plaintiff has a right to have that liability satisfied out of the assets of the firm;" and in support of their position cite Johnson v. Matthews, 32 Md., 368; Rhodes v. Amsink, 38 Md., 354, and Imbusch v. Farwell, 1 Black, 566.

The conclusion of the court in each of these cases would seem to support the claim of counsel, but a careful examination of them will remove this impression.

Imbusch v. Farwell was commenced in the District Court of the United States for Wisconsin, and seems to have been decided in accord with the provisions of a statute of Wisconsin, to the effect that where judgment is recovered against some members of a firm and not against others that satisfaction of the judgment may be by seizure and sale of the partnership effects.

We cannot doubt that the cases of Johnson v. Matthews and Rhodes v. Amsink, *supra*, were largely determined by the statute of Maryland before recited, and beyond that are predicated upon the authority of Imbusch v. Farwell without mentioning the distinction between the Maryland and Wisconsin statutes.

Without questioning the soundness of those decisions it is apparent to us that in this District, where the common law in this respect has not been modified by statute, the law is otherwise. The obligation of the firm being merged in the judgment against one partner, as to all members of the firm, and the judgment being against one only, it logically follows that the execution cannot be broader than the judgment and can only be levied on the property of the judgment debtor; hence cannot be levied on the partnership property. *Ex parte* Christy, 2 D. & C., 155; Bradley v. Miller, 1 Rose, 273.

It is not contended that the interest of Camille Solari in the partnership fund attached can be reached by this attachment proceeding. His interest is what may remain to him after the settlement of the partnership business and the payment of the partnership debts. This can only be ascertained judicially by the aid of a court of equity.

It is claimed that Camille Solari may not appeal because not aggrieved by the decision of the Court in Special Term; that the application of the fund in the hands of the garnishee to the extinguishment of the judgment against him would benefit, not injure him. He is shown by the record to be a partner, and as such is entitled to contend for the preservation and legal appropriation of the partnership property.

We do not perceive that the question of the death of Joseph Solari as presented by the record is one that can be now considered, for the reason that the suit and judgment are not against Camille as surviving partner; hence the determination of the issue as to the death of Joseph Solari, before hearing the motions to discharge the attachment, would not have raised any implication of the proper disposition of these motions.

If it be admitted that our decision is based upon technical law it, nevertheless, appears to be the law of this jurisdiction, and as such must be administered until such time as the legislative power in its wisdom may intervene.

The order of the court below, overruling the motions to quash and discharge the attachment, is reversed, with costs, and the cause remanded for further proceedings.

ARTHUR MURPHY, who quitted the stage, attempting the law, was refused a call by the Benchers, on the ground that he was a "vagabond" by act of Parliament.—*Irish Law Times.*

A NEW TRIAL can be granted by the Supreme Court on account of newly discovered evidence and not for mere irregularities at the trial, such as the fact that a juror had previously declared his strong preference in the case, particularly when the trial court overruled such objection to the juror.—McKee, S. C. N. Car., Dec. 30, 1887: 4 S. E. Rep., 545.

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UNITED STATES CIRCUIT COURT.

DISTRICT OF OREGON.

EX PARTE CHIN KING, ON *habeas corpus.*

EX PARTE CHAN SAN HEE, ON *habeas corpus.*

A child born in the United States of Chinese parents is by the rule of the common law and the Fourteenth Amendment, a citizen of the United States; and when restrained of its liberty of locomotion therein, may be delivered therefrom, on *habeas corpus*, by the proper national court.

DEADY, J.—The writ of *habeas corpus* in these cases was allowed and issued on June 25, 1888, and they were heard together on the same day.

The petition of Chin King states that she was born in San Francisco, California, on October 10, 1868; while that of Chan San Hee states that she was born in Portland, Oregon, on March 15, 1878; and they each state that they are restrained of their liberty by William Robert Laird, the master of the British bark *Kitty*, because the collector of customs for this port refuses to allow them to land from said bark, on the ground that the petitioners are Chinese and have no return certificate, as required by the Act of Congress on that subject; but they aver that they are native born citizens of the United States, and, therefore, not included within the terms of said Act.

The return of the master to each writ states that the *Kitty* sailed from Hong Kong for Portland, on April 19, 1888, and that the petitioners were passengers thereon during said voyage, and are now in custody on board the same, for the reasons stated in the petitions.

On application, the U. S. district attorney was allowed to intervene on behalf of the United States, and alleges that he had no knowledge or information sufficient to form a belief as to whether the petitioners were born in the United States as alleged, or not.

On the hearing it appeared that Chung Yip Gen is a Chinese merchant who has lived and done business in this city for the past thirteen years, and for twelve years prior thereto in San Francisco; that he was married in San Francisco about twenty-three years ago, and the petitioners are his daughters, the older one having been born in San Francisco and the younger one in Portland, and that in 1881, the father sent them and their mother to China, from whence they were to return when they pleased.

By the common law, a child born within the allegiance — the jurisdiction — of the United States, is born a subject or citizen thereof without reference to the political status or condition of its parents; (McCay v. Campbell, 2 Saw., 118; *in re* Look Fin Sing, 10 Saw., 353; Lynch v. Clark, 1 Sandf., 583). In the latter case it was held that Julia Lynch, who was born in New York in 1849 of alien parents during a temporary sojourn by them in that city and returned with them the same year to their native country where she resided until her death, was an American citizen.

The vice chancellor, after an exhaustive examination of the law, declared that every person born within the dominion and allegiance of the United States was a citizen thereof, without reference to the situation of his parents. This, of course, does not include the children born in the United States of parents engaged in the diplomatic service of foreign governments, whose residence, in contemplation of public law, is a part of their own country.

The rule of the common law on this subject has been incorporated into the fundamental law of the land. The Fourteenth Amendment declares: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside."

In re Look Tin Sing, 10 Saw., 353, it was held that a person born within the United States, of Chinese parents, not engaged in any diplomatic or official capacity under the Emperor of China, is a citizen of the United States. The case is similar to that of the petitioners. The party in question was born in California in 1870, of Chinese parents. In 1879 he went to China, and returned to California in 1884, without the certificate provided for in the restriction of 1882, or that of 1884, and was, therefore, denied the right to land.

Mr. Justice Field in delivering the opinion of the court in which Sawyer, Sabin and Hoffman concurred, says, (p. 359): "The inability of persons to become citizens under those laws (of naturalization) in no respect impairs the effect of their birth, or of the birth of their children, upon the status of either, as citizens of the United States."

The only point made by the district attorney against the petitioners on the question of their citizenship is, that they left this country without, as he claims, any definite or fixed purpose to return.

But, I think, the evidence does not warrant so strong a statement. For aught that appears, they intended to return; and the fact that they have returned gives strength to the inference. The most that can be said is, there was no time fixed for their return. And that is the case with hundreds of minor American citizens, who go abroad yearly, for nurture and education. But it seems that the citizenship of the petitioners would not be affected by the fact, if they had never come back, unless it also appears that they had in some formal and affirmative way renounced the same.

However, in my judgment, a father cannot deprive his minor child of the status of American citizenship, impressed upon it by the circumstances of its birth under the Constitution and within the jurisdiction of the United States. This status, once acquired, can only be lost or changed by the act of the party when arrived at majority, and the consent of the Government.

By Section 2 of Article 4 of the Constitution, it is provided: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

It has always been held that the privileges and immunities there referred to, are fundamental; and that a citizen of one State may, at least under this provision, pass through or reside in any other State of the Union for the ordinary pursuits or purposes of life. Corfield v. Coryell, 4 Wash. C. C., 180; Paul v. Virginia, 8 Wall. 180.

The action of the collector in these cases, has the effect, and is so intended, to deny these citizens of the United States, the right of free loco-

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motion within the same—the right to come into, pass through or reside in this State, and is, therefore, contrary to and in violation of the Constitutional provision guaranteeing such right to every citizen. Sections 751, 752 and 753 of the Revised Statutes provide, in effect, that the courts of the United States and the judges thereof shall have power, by *habeas corpus*, to deliver a person held in custody or restrained of his liberty, in violation of the Constitution or of a law or treaty of the United States.

The petitioners, as we have seen, are restrained of their liberty in violation of the Constitution, and, therefore, this court has jurisdiction to discharge them on a *habeas corpus*.

The prisoners are discharged from custody.—*Chicago Legal News.*

SUPREME COURT OF NEW YORK,

SPECIAL TERM

—

MOOREHOUSE v. HUTCHINSON.

The testator, by the second clause of his will, gave all his property to his wife during her life, and after her death it was to be equally divided between his five children, three sons and two daughters. In the seventh clause the wife was directed, by conveyance to take effect after her death, to convey "the interest of my two daughters, devised to them in the will, to Alcander Hutchinson, in trust, for their sole and separate use." The wife died in 1887, having long prior thereto executed a deed under the will to Alcander Hutchinson.

***Held*, That the trust contained in the seventh paragraph is passive and therefore void.**

LAWRENCE, J.—I do not regard the decision of the General Term upon the appeal taken by Mary Ann Hutchinson, the executrix, from the decree of the surrogate, revoking the letters testamentary issued to her, and removing her as trustee, as precluding the plaintiff in this action from questioning the validity of the trust contained in the seventh clause of the will of Hiram Hutchinson, deceased.

There are several trusts contained in that will, either one of which would be sufficient to support the reasoning upon which the determination of the General Term proceeded. That decision must be regarded as establishing that Mrs. Hutchinson under said will became a trustee, and that, therefore, in a proper case it was within the power of the surrogate to remove her, and also as establishing that such case had been made out before the surrogate. No expression of opinion is given as to the force or effect of the different trusts, nor as to their character, whether active or passive.

The second and seventh paragraphs of the will are as follows:

Second. I bequeath and devise all of my property, real and personal, to my wife, Mary Ann Hutchinson, for the term "of her natural life, and after her death to be equally divided between my children, viz.: Alcander Hutchinson, Sarah Elizabeth Southgate, wife of the Rt. Rev. Bishop Southgate, Mary Frances Moorehouse, Hiram Hutchinson, Jr., and Charles Louis Richard Hutchinson, in such proportion, as taking into account the sums already paid or advanced to them, or hereafter advanced to them under the provisions of this will, shall give them equal shares. Nevertheless, and always provided that the bequest and devise of the said property for the term of her natural life to the said Mary Ann Hutchinson, is intended to be and shall operate as a trust, for the uses and purposes hereinafter declared, and that the trusts hereinafter created shall be a charge both upon the incomes of the property and on the body of the estate herein conveyed, both real and personal, and of every kind and description."

Seventh. In trust that the said Mary Ann Hutchinson shall "by proper form of conveyance executed to take effect on her death, convey the interest of my two daughters devised to them under this will, to Alcander Hutchinson, in trust for their sole and separate use. Also conveying and setting aside in like manner for their separate use any sums of money devised to them from my estate by payments, gifts or appropriations, made to or for them, by the said Mary Ann Hutchinson after my death, from the incomes accruing to her from her life estate."

It is quite apparent from the provision contained in the second paragraph above referred to, and also from the provisions of the eighth paragraph of the will, that it was the intention of the testator, that upon the death of Mrs. Hutchinson, the testator's estate should be distributed equally, and that his children should be made "equal each one to the other" (see eighth paragraph of the will). Mrs. Hutchinson died on the 10th of March, 1887, having long prior thereto, pursuant to the directions of the seventh clause of the will, executed a deed to Alcander Hutchinson, of the share or interest "derived or devised" under the will to the plaintiff in this action. The plaintiff now claims that the trust contained in the seventh paragraph of the will is passive, and therefore void; that she is entitled to a judgment against the said defendant to that effect, and that he account for, deliver and convey all the property held by him, as such alleged trustee, together with the accumulations thereof.

In was long ago settled that a femme covert with respect to her separate estate is to be regarded in a Court of Equity as a femme sole, and that she might dispose of her property without the consent or concurrence of her trustee, unless specially restrained by the instrument under which she acquired her separate estate (Jaques v. Methodist Episcopal Church, 17 Johnson, 548; see also Jervoise v. Duke of Northumberland, 1 Jacobs & Walker, 559 and 571; 2 Story Eq. Juris., section 979).

It was also held that where the absolute beneficial interest in the trust was given to the separate use of a married woman, without any restriction or direction as to the mode of possession or enjoyment, or in such manner that the Statute of Uses would execute the use or title in her, if it was real estate she would be entitled to call upon the trustees for an immediate conveyance or transfer of the legal title to her. (See Perry on Trusts, sec. 667, vol. 2, second ed. 262, and cases cited. See also Tiffany & Bullard on Trusts, &c., 686).

In Rawson v. Lampman (1 Seld, 426), it was held that where a conveyance of land is made to one person in trust for the use and benefit of

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another, his or her heirs and assigns, without limitation, no estate or interest vests in the trustee, but the entire estate, legal and equitable, vests in the person to whose use the conveyance is made, subject, however, to such conditions as would have attached to the legal estate, had the title vested in the trustee, according to the terms of the deed. The Court cited the 49th and 47th sections of the Revised Statutes of Uses and Trusts. That case was approved in Fisher v. Hall (41 N. Y., 424), and so far as I have been able to discover, it has never been questioned as a correct exposition of the law. (See also Woodgate v. Fleet, 64, N. Y., 566; Berden v. Slocum, 71 N. Y., 345). In that case the will provided as follows: "I direct my said trustees to permit and suffer my son, William B. Slocum, to have, receive and take the rents, issues and profits for the term of his natural life, and after his decease, I give, devise and bequeath the same part or share to the heirs at law of my said son."

It was held that the trust so attempted to be created was a passive one and was invalid, and that the son took a life estate, upon which a judgment against him was a lien. (See also Syracuse Savings Bank v. Holden, 105 N. Y., 405; Helck v. Reinheimer, 105 N. Y., 470).

Under the seventh paragraph of the will, the grantee, Alcander Hutchinson, has no power to do anything. He is not to receive the rents, issues or profits of the share intended for Mrs. Moorehouse, nor of that of her sister. He is not to apply them to their use or maintenance.

I cannot but conclude, therefore, that the alleged trust created in the seventh clause of the will is a mere passive trust and therefore void.

The cases cited by the learned counsel for the defendant do not contain anything adverse to the views expressed in the cases heretofore referred to.

In Ward v. Ward (105 N. Y., 68) duties were imposed upon the executors as trustees, which made the trust active and not passive.

In Donavan v. Vandemark (78 N. Y., 244) it was held that it was not necessary under the statute, in order to create a valid trust, that the trust should be stated in the very words of the statute. In that case all the testator's real and personal estate was given in trust for the necessary support and maintenance of the testator's son during his natural life, and after the son's death the estate was devised and bequeathed to the children of the son. The executor was also authorized to sell certain of the real estate. The court there held that the will gave to the trustee, directly or inferentially, power to manage the estate and receive the rents and profits and apply them, according to his judgment, in the support and maintenance of the son, and that, therefore, a valid trust was created and a legal title vested in the trustee. No such feature exists in this case.

Alcander Hutchinson is not required or authorized to receive the rents and profits of the property conveyed to him, nor is he to apply them or hold them for the support or maintenance of the plaintiff, or to any one for her benefit (see case last cited at p. 247).

Morse v. Morse (85 N. Y., 53) was a case directly within the provisions of the statute, the trustee being directed to annually pay the interest of one-sixth of the residuary estate to the son of the testator, in whose behalf the trust was created. The same remark applies to the case of Moore v. Hegeman (72 N. Y., 376) where the will directed that a specific sum out of the rents, issues and profits of each share of the estate, during the minority of the child for whose benefit it was held, "shall be applied to his or her education, support, &c.," the court holding that the words "applied" and "paid over" as used were substantial equivalents, and that the trust was within the provision of the Statute of Uses and Trusts, relating to express trusts (1 Rev. Stat., 430; 72 N. Y., 376).

In the view above taken it is entirely immaterial whether the testator intended to use the word "derived" in the seventh paragraph of the will, or whether, as the plaintiff contends, that word was by a clerical error used instead of "devised." Either word is sufficiently descriptive of the interest of his daughters in his estate which the testator directed his wife to convey to his son, Alcander, for the sole and separate use of each of the daughters.

On the authorities above cited, I am of the opinion that the plaintiff in this case is entitled to the relief for which she prays and judgment will be rendered accordingly. Findings will be settled on two days' notice.—*N. Y. Daily Register.*

FAYETTE COUNTY (OHIO) COMMON PLEAS.

STATE v. YATES.

A dog is a "thing of value," and may be stolen; and burglary may be committed by breaking and entering with intent to steal a dog.

HUGGINS, J.—This cause was heard upon demurrer to the indictment. In substance the indictment charged that the defendants, in the night season, forcibly broke and entered a stable with intent to steal two dogs of the value of $40.

The position taken and relied on, in support of the demurrer, is, that dogs can not be stolen, and that, therefore, a breaking and entering with intent to steal a dog, is not burglary. To sustain this position the case of State v. Lymus, 26 Ohio St., 400, is cited.

It must be conceded that if no material change has been made in the law of the State upon this matter since Lymus' case was decided, it is directly in point and settles the question here. It was held in that case, that the Larceny Act of Ohio having defined what could be stolen, by the words "goods and chattels," no larceny could be predicated upon the taking of a dog, because dogs were not "such goods and chattels as were esteemed at the common law to be the subjects of larceny."

"The reason generally assigned by common law writers for this rule, as to stealing dogs, is the baseness of their nature, and the fact that they were kept for the mere whim and pleasure of the owners. * * * .

"This common law rule was extremely technical, and can scarcely be said to have a sound basis. While it was not larceny to steal a dog it was larceny to steal the skin of a dead dog, and to steal many animals of less account than dogs.

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Lord Coke, in his Institute, said: 'Of some things that be *feræ naturæ*, being reclaimed, felony may be committed, in respect of their noble and generous nature and courage, serving *ob vitæ solatium* of princes and of noble and generous persons who make them fitter for great employments, as all kinds of falcons and other hawks, if the party that steals them know they be reclaimed.' * * * One reason hinted at by Lord Coke for holding that it was not larceny to steal dogs was that it was not fit that 'a person should die for them,' and yet those ancient lawgivers thought it not unfit that a person should die for stealing a tame hawk." Earl, J., in Mullally v. People, 86 N. Y., 367.

The faithfulness of the dog is portrayed in nearly every reading book put into the hands of school children. It has been a favorate theme in literature. We read:

"'Tis sweet to hear the watch dog's honest bark
Bay deep-mouthed welcome as we draw near home."
—*Don Juan, 1st Canto, 18th Stanza.*

"Lo, the poor Indian! whose untutored mind
Sees God in clouds, or hears him in the wind;
* * * * * * *
To be content's his natural desire:
He asks no angel's wing, no seraph's lyre,
But thinks, admitted to that equal sky,
His faithful dog shall bear him company."
—*Pope's Essay on Man.*

"The tither was a plowman's collie.
* * * * * * *
He was a gash and faithfu' tyke
As ever a lap, a sheugh or dyke;
His honest, sonsie, baws'nt face
Ay got him friends in ilka place."
The Two Dogs.—Burns.

"But the poor dog, in life the firmest friend,
The first to welcome, foremost to defend,
Whose honest heart is still his master's own,
Who labors, fights, lives, breathes for him alone,
Unhonored falls, unnoticed all his worth."
—*Inscription on the monument of a Newfoundland dog.—Byron.*

Yet by the common law, and the law of Ohio as declared in Lymus' case, if some scoundrel had taken the honest watch-dog, or the poet's firmest friend, *lucri causa* and *animo furandi*, breaking into the mansion-house in the night season for the purpose, no offence would have been committed.

At the highest point of the great St. Bernard pass, eight thousand feet above the sea, and near the line of perpetual snows, is the hospice of St. Bernard. There, for many ages, pious monks have dwelt and made it the business of their lives to rescue perishing travelers caught and overwhelmed by the snow storms of the Alps. They have bred and kept dogs whose natural and trained sagacity in finding and saving persons who, but for them, must have perished miserably, has long made them celebrated the world over. Without doubt the lives of very many persons have been saved by these dogs. Yet if the pass and hospice of St. Bernard had been in Ohio when Lymus' case was decided, and some evil-disposed person, maliciously and for the sake of gain, had taken the whole kennel of St. Bernard dogs, no offense would have been committed, and that though storm had been impending and many travelers on the road.

These considerations are not directly in point, but may perhaps be excused because of the somewhat singular nature of the subject. The present question is, has any change been made in the law of Ohio since Lymus' case was decided, by reason of which it is no longer decisive of this case, and, if so, what is such change?

As held in that case, "the property intended to be stolen by the burglar must be property of which a larceny may be committed." At the time that case was decided, as before said, our Larceny Act, in describing property which could be stolen, used the words "goods and chattels." "These words," says the opinion, "at common law have a settled and well defined meaning, and when used in statutes defining larceny are to be understood as meaning such goods and chattels as were esteemed, at common law, to be the subjects of larceny. As dogs at the common law were held not to be the subjects of larceny, they are not included in the words 'goods and chattels.'"

Since that decision our Larceny Act has been revised and re-enacted, and the words now used to describe property that may be stolen are "anything of value." * * * Tested by the definitions of these philosophers (Bouvier, Bastiat and Walker) a dog has or may have a value. Tested by the common sense of men, and even by the common law, can there be any question that dogs come within the meaning of the phrase "anything of value."

As to the utility of dogs, opinions may differ. The flockmaster whose sheep are worried by dogs may have one opinion; the shepherd in the hills of Scotland, whose flocks are herded and tended by his dogs, may have another. There are commodities whose value as represented in money is very great, and which it would be a crime to steal, but which many good people think the world would be better without. Dogs are property sold and transferred in ordinary business transactions. "Large amounts of money are now invested in dogs, and they are largely the subjects of trade and traffic. In many ways they are put to useful service, and so far as pertains to their ownership they possess all the attributes of other personal property." Mullally v. People, *supra*. No reason is now apparent why this kind of property should have no protection in the criminal law.

Demurrer overruled.

A CURIOUS BLUNDER came to light in the Cumberland (Me.) Superior Court last week. The *Lewistown Journal* tells of it as follows: In an indictment against a Brighton man for keeping a liquor nuisance it was alleged, through a mistake in copying, that he had been guilty of the offense on the 15th day of May, 1806, and on divers days since then up to the time of finding the indictment. The counsel for the respondent was elated at the discovery of this error and confidently moved to quash the indictment on the ground that his client was not alive in 1806. But the county attorney rose and said that he would enter *nolle prosequi* as to the first eighty years of the indictment and would try his case on the remaining time. The judges ruled that the indictment would then hold good. Upon this the respondent pleaded guilty and paid his fine.

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Marriage in New York After Foreign Divorce.

During the last few days the *Herald* has been publishing a series of articles upon the recent marriage in this city of an English nobleman and of a lady well known in New York society.

Incidentally, there has been a considerable amount of discussion of the law as to the validity of this and other similar marriages.

The case is this: A, an English subject, married in England and living there, has been divorced in that country from his wife on the ground of his adultery. The decree of divorce contains no prohibition against his remarrying, and it is understood that by the English law such a remarriage would there be lawful. After this divorce he comes to New York and here marries B, a resident of this State.

Query: Is the second marriage void, and are the parties thereto subject to criminal prosecution?

The provisions of the Revised Statutes are as follows: "No second or other subsequent marriage shall be contracted by any person during the lifetime of any former husband or wife of such person, unless: 1. The marriage with such former husband or wife shall have been annulled or dissolved for some cause other than the adultery of such person; or, 2. Unless such former husband or wife shall have been finally sentenced to imprisonment for life. Every marriage contracted in violation of the provisions of this section shall, except in the case provided for in the next section," (which treats of five years' absence,) "be *absolutely void.*" (2 Rev. Stat., 139, sec. 5.)

It is very clear that under these provisions the marriage of A will be absolutely void, unless there is some distinction made by the courts between the effect of a foreign and domestic divorce for adultery.

There is a surprising want of direct adjudication upon this question, and two of the cases mentioned by the *Herald*, Cropsy v. Ogden, 11 N. Y., 228, and People v. Faber, 1 N. Y. Crim. Rep., 115, upon a careful examination will be found not to go to the extent claimed.

Cropsy v. Ogden, 11 N. Y., 228, was a case where both marriages were solemnized in New York, and the divorce was also granted in this State. The opinion of the court, therefore, can not *decide* what was not in question in the case, namely, the effect of the marriage here of a person divorced abroad.

But *obiter*, the court, in the strongest manner, says that the remarriage of one divorced abroad is absolutely void. The statute says that the court "*covers the case of one married abroad and divorced abroad for his own adultery*, just as plainly as it does the case of a marriage and divorce for the same cause here" (p. 235). This ruling, although, as has been said, it is only *obiter*, will doubtless be followed if the case arises. People v. Faber, 1 N. Y. Crim. Rep., 115, a criminal case, is said to be similar to the case under discussion in that the first marriage was celebrated abroad.

This is a mistake, both marriages in that case being in the State of New York, as well as the divorce, as appears by an examination of the record, and this case does not apply, except as laying down the rule—rather a serious one for the parties interested—that a person against whom a decree of divorce for adultery has been obtained is guilty of bigamy if he or she marries within the State within the lifetime of the party obtaining the decree.

The present case, however, appears to be covered by a decision of the Supreme Court, which has not been cited in the discussion of the question. Smith v. Woodworth, 44 Barb., 198.

That was a case similar to the present one. Smith was married to Jane Houston at Boston, and was thereafter divorced from her by a decree of the Supreme Court of Massachusetts, on the ground of his adultery. Afterward, his former wife being still living, a marriage ceremony was performed between Smith and plaintiff at the city of New York. This marriage was held to be void, the court saying: "The case is manifestly within the very letter of the section above transcribed and is not within either of its exceptions. The plaintiff's counsel insists, however, that this section is applicable only to cases of adultery and divorces in this State. We do not assent to this construction of the statute. It is enough that there was a prior marriage, and that the former wife was living at the time of the second marriage (1 Kern., 233). It is not material that the former marriage should have taken place or have been dissolved within this State. The case is within the meaning as well as the letter of the statutes" (page 200).

In that case the court did not consider whether or not there was a prohibition in the Massachusetts law against remarriage, and it is in this respect and in this only, that the decision in Smith v. Woodworth differs from the case now under discussion.

Whether that point was raised cannot be ascertained. But an examination of the Massachusetts law governing the Massachusetts marriage in Smith v. Woodworth shows that the statute is as follows: "In case of a divorce from the bond of matrimony the innocent party may marry again as if the other party were dead. *Any marriage contracted by the guilty party*, except as provided in the following section" (relating to remarriage upon petition) "*shall be void* and such party shall be adjudged guilty of polygamy." Gen. Stat., Chap. 107, Sec. 25.

It will be seen that this is even more stringent than our own law, and there may be a distinction between the effects of a Massachusetts and an English divorce.

The precise case now involved has been passed upon by the Supreme Court of Massachusetts in Bullock v. Bullock, 122 Mass., 3, where it was held that a party against whom a divorce is obtained for adultery in another State, by the law of which in such a case the parties may marry again, may contract a valid marriage in Massachusetts, and that the restriction imposed by the statute already quoted applies only to divorces granted in Massachusetts.

It will be seen from this that in Massachusetts the marriage under discussion would be perfectly good if celebrated there.

But it must be admitted that as far as our authorities go in this State they point to the conclusion that the marriage is void.

It would seem that the only way of escaping this conclusion, under the drift of our decisions,

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would be for the court to hold that the absence of a prohibition in the English law is equivalent to the permission to remarry, which can be granted by our own courts.

As to the criminal aspect of the question reference must be had to the Penal Code, Sections 298 and 299.

Section 298 is: "A person who having a husband or wife living marries another person is guilty of bigamy," &c.

Section 299 is: "The last section does not extend; 1." (Does not apply.) "2. To a person whose former marriage has been pronounced void or annulled or dissolved by the judgment of a court of competent jurisdiction *for a cause other than his or her adultery;* or, 3. To a person who being divorced for his or her adultery has received *from the court* which pronounced the divorce *permission to marry again;* 4." (Does not apply.)

These provisions were also to be found in the Revised Statutes, seventh edition, 2,510.

It will be seen that in the present case the groom does not fall within any of the exceptions of the statute, and would appear to be guilty of bigamy, unless, as has been said in discussing the civil side of the question, the courts would construe the want of prohibition by the English law as equivalent to a permission to remarry of our own courts, and should apply in the defendant's favor the legal principle that criminal statutes will be contracted by interpretation so as to avoid punishing those who, though breaking their letter, have not violated also their spirit.

It is very certain that, under the Faber decision, a person who has been divorced for his adultery has a "husband or wife living" within the provisions of Section 298 of the Penal Code.

It would seem that the case in its civil and criminal aspects is serious enough to warrant a more definite statutory enactment upon the subject.

As the matter stands now, we are reminded of the remark of Lord Holt, in London v. Wood, 12 Mod., 669: "An act of Parliament can do no wrong, though it may do several things that look pretty odd."—*New York Law Journal.*

Address of Justice Matthews.

The following is the address, in part, of Justice Stanley Matthews, of the United States Supreme Court, before the Yale Law School, at New Haven:

"There was no maxim more familiar to the minds of the great men who formed our Constitution than that which lodged the safety of civil and political liberty in a division of the powers of the Government into three great departments, Legislative, Executive and Judicial. It may be admitted that the Constitution of the United States is a compact, and that it derived all its original force from the assent of the States who became parties to it, in its ratification. But the question in hand is not who made the Constitution, nor how it is made. The important matter to understand is—What is it that was made? What is the nature and character of the Government ordained by it? Who and what are the subjects of its jurisdiction? What are its relations to the people considered both as organized into local political States and as individual persons? It is in answer to these inquiries that it becomes important to consider the nature and exercise of the judicial powers of the United States.

"The principle according to which the Supreme Court in the administration of justice pronounces upon the validity of the legislation of Congress and of the State governments, seems to confer an extraordinary power upon that tribunal, and has always constituted a puzzle to foreign students of our institutions. Attempts have been made in a few instances, under the forms of judicial procedure, to invoke the interference of the courts in matters purely political. In such matters jurisdiction has been denied because the questions were not judicial. A notable illustration of this principle is found in the great controversy concerning the tariff which culminated in the Nullifying Ordinance of the State of South Carolina, on the one hand, and on the other in the Force bill, so called, of 1833, which was finally composed by the political and legislative compromise acts of that period.

"The conclusion, indeed, is inevitable that if the powers of the General Government cannot operate directly upon the State governments, considered as political bodies, they nevertheless do operate directly upon every natural and subordinate political person domiciled or being within the territorial limits of the State.

"Such a combination may become powerful enough, as it did in the case of our late Civil War, to overthrow existing State governments, erect others in their places, and confederate them together with a view to establish a revolutionary government; but, unless it succeeds in its ultimate object, it does not displace the constitutional relations between the States themselves and the United States. It is, therefore, a settled Constitutional doctrine that the acts of secession which resulted in the Civil War of 1861 were the unlawful acts of the usurping State governments, and not the acts of the States themselves, and that consequently the war itself was not a war between the States, nor a war of the United States against States, but a war of the United States against unlawful and usurping governments, representing, not the States, but a rebellion against the United States.

"The whole structure of the political fabric is reared upon a solid and deep foundation; that foundation is the justice of the nation. That justice retrains the broad and overtopping powers of the National Government within the just authority of the Constitutional limits. It retrains the governments of the States to the exercise of the powers which have been reserved to them."

A Washington Lawyer as Referee.

The controversy between the United States and Hayti, growing out of the imprisonment and death of Charles Adrian Van Bokkelan, a citizen of the United States, formerly a resident of Buffalo, on account of which a claim for pecuniary indemnity has been made upon Hayti by the United States, has been submitted by agreement of the two Governments for decision to A. Porter Morse, of Washington, as referee. The decision is to be rendered within six months. The amount claimed is $120,000.

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THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

July 24.

11266. Honora Roache v. Jonathan H. Gray et al. For account. Com. sols., Thomas and Maedel.

11267. Charles B. Church v. Thomas M. Carpenter et al. To subject to sale equitable interest lots. Com. sol., S. T. Thomas.

11268. Anna C. Morrison v. Robert M. Morrison. For divorce. Com. sol., H. B. Moulton.

July 25.

11269. Saveria A. Di Marzo et al. v. Pasquale Di Marzo. Conveyance part lot. Com. sol., William P. Laselle.

July 26.

11270. Jennie M. Curtis v. Thomas J. Curtis. For divorce. Com. sol., H. B. Moulton.

July 27.

11271. Mary C. English v. Mary E. Quill et al. To sell infant's real estate. Com. sol., M. J. Colbert.

11272. Jane B. Hawkins et al. v. Henry K. Craig et al. Partition by sale. Com. sols., Carusi & Miller.

July 28.

11273. William T. Rockhold v. W. E. Sims. To foreclose chattel mortgage. Com. sol., N. Dumont.

CIRCUIT COURT.—New Suits at Law.

July 23.

28830. Frederick Merters v. Richard L. Cropley et al. Note, $586.97. Piffs attys, C. M. & H. S. Matthews.

28831. Potomac Terra Cotta Co. v. Nicholas Studer. Notes, $229. Piffs atty, F. T. Browning.

28832. Thomas Sommerville et al. v. The Perfection Heat and Light Co. Account, $205.32. Piffs attys, Riddle, Davis & Padgett.

July 24.

28833. Charles G. Nicholson et al. v. William E. Burford. Check, $200. Piffs atty, J. B. Larner.

July 25.

28834. The McCowan Co., to the use of Edw. G. Wood, receiver, v. Charles A. Krause. Note, $124.33. Piffs atty, Fred. W. Jones.

July 26.

28835. Rae Stephens et al. v. Charles N. Cornell. Replevin. Piffs atty, Fillmore Beall.

28837. William Donnelly v. George W. Utermehle. Damages, $500. Piffs attys, Goode and Thomas.

July 28.

28838. Alexander Fennant v. Susan Fowler. Account, $247.75. Piffs attys, C. M. & H. S. Matthews.

28839. Virginia Bluemeyer v. The Metropolitan Railroad Co. Damages, $5,000. Piffs atty, C. Carrington.

28840. William L. Rose v. George M. Harris et al. Damages, $20,000. Piffs atty, J. J. Johnson.

28841. Henry M. Wagner et al. v. John M. Neale et al. Account, $967.44. Piffs atty, J. J. Darlington.

28842. James R. Curtis v. J. B. Slack. Damages, $5,000. Piffs atty, D. E. Cahill.

28843. The Central Type Foundry, of St. Louis, to the use of the Union Type Foundry, of Chicago, v. The Chesapeake Fire Insurance Co. Policy, $527.36. Piffs atty, William G. Johnson.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Guisseppe Mosca, late of Stockton, New Jersey, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1888.

DORSEY CLAGETT, Register of Wills, D. C.

31

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth H. Mullikin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of July, 1888.

BENJAMIN H. STINEMETZ,
JOHN H. OLCOTT,

31 No. 3164. Ad. D. 14 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Louisa Harrison Chew, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

ROBERT S. CHEW, Adm'r., Riggs & Co.

31 Wm. G Johnson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emma Cholet, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

MARY E. HUSSEY. Adm'x, 1206 H st. n. w.

31 Frank T. Browning, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of July, 1888.

John L. Maffitt
v.
Emma H. Maffitt et al. } No. 11167. Equity Docket 28.

On motion of the plaintiff, by Mr. A. M. McBlair, his solicitor, it is ordered that the defendants, Mary R. Maffitt, Clarence D. Maffitt and Robert S. Maffitt, Caroline D. Maffitt, Alfred M. Maffitt, Katherine L. Maffitt, John M. Wright, Joshua G. Wright, Mary A. Wright, Thomas H. Wright and Caroline L. Wright, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of lot 19, square 285, in the city of Washington, District of Columbia, the same being No. 1214 K St., N. W.

By the Court. E. F. BINGHAM, Chief Justice, &c.

A true copy. Test: R. J. MEIGS, Clerk, &c.

31 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Freeman Grant Thompson
v.
Maud W. Finley et al. } In Equity. No 11179.

Upon consideration of the report of George E. Emmons, trustee, of the sale of all of lot 12 in square numbered 764, except the west eight feet front by the depth thereof, as particularly described in these proceedings, to John M. Norris, at private sale for the sum of seventy-five hundred dollars cash, it is, this 31st day of July, 1888, by the Court, ordered that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the first day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before the first day of September, 1888.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

31 By W. E. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 23d day of July, 1888.

William H. Crumpton v. Maggie Crumpton. } No. 11209. Eq. Docket 28.

On motion of the plaintiff, by Mr. R. White, his solicitor, it is ordered that the defendant, Maggie Crumpton, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bonds of matrimony on the grounds of willful desertion of the plaintiff by the defendant for the uninterrupted period of two years and adultery of the said defendant.

By the Court. E. F. BINGHAM, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of July, 1888.

Clara A. Beale v. Edward M. Beale. } No. 11191. Eq. Docket 28.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, Edward M. Beale, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of adultery.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James F. Shea v. Sallie Shea et al. } No. 11185. Equity.

The trustees herein, having reported a sale of the south forty (40) feet front, by depth thereof, of lot seven (7), in square two hundred and sixty-three (263), in the City of Washington, in the District of Columbia, for $6,115. It is, this 18th day of July, 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 3d day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sallie S. Gaither, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of July, 1888.

HENRY B. KALUSOWSKI,
ALBERT M. READ,
31 No. 3187 Ad D. 14 Executors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 30th, 1888.

In the case of Benjamin F. Rittenhouse, Executor of James J. Kenney, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
31 No. 2669. Ad. D. 13. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the case of Ada G. Adams, Administratrix of Crawford C. Adams, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 10th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
30 No. 2569. Ad. D. 13. James F. Hood, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 24th, 1888.

In the matter of the Estate of Charles Homiller, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James H. Taylor.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. EDWARD F. BINGHAM, Chief Justice.
30 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Ray v. A. S. Carter et al. } Equity No. 10623.

Jackson H. Ralston and David D. Stone, the trustees appointed herein, having reported the sale of the twenty four feet front by the depth of lot nine (9) in square eighty-one (81), lying next north of the south twenty-four feet of said lot, and being in Washington, D. C., to Anderson W. Shields for the sum of $1,300, it is, this 21st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of August, A. D. 1888.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER before said 21st day of August, A. D. 1888.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 23, 1888.

In the matter of the Estate of Almira W. Powell, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by George W. Brown, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. E. F. BINGHAM, Chief Justice.
Test: DORSEY CLAGETT, Register of Wills.
30 No. 3159. Ad. D. 14. Henry Wise Garnett, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Alexander Y. P. Garnett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1888.

HENRY WISE GARNETT, Ex'r.

30 No. 3156. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Benjamin H. Keller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1888.

CATHARINE ANN KELLER, Ex'x, 1218 28th st. n. w.

30 No. 3144. Ad. D. 14. S. A. Cox, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Joseph B. Cecil**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1888.

EDWIN H. HARNER, Adm'r, 1018 25th st. n. w.

30 No. 3157. Ad. D. 14. Wm. T. Bailey, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel McMahon**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

MARY McMAHON, Adm'x, Anacostia P. O., D. C.

30 No. 3138. Ad. D. 14. J. C. De Putron, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Peter McIntyre**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of July, 1888.

✕ SISTER BEATRICE DUFFY, Adm'x,
Providence Hospital.

30 No. 3135. Ad. D. 14. C. C. Lancaster, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Ida Forrest et al. v. Abraham F. Kendick et al. } No. 11065. In Equity.

It is, this 25th day of July, A. D. 1888, ordered that the sale reported by the trustee in the above entitled cause in his report filed herein, be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned day.

By the Court. E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

30 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the case of **Sarah J. Kennedy**, Administratrix c. t. a. of **Joseph C. G. Kennedy**, deceased, the Administratrix c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 17th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 2791. Ad. D. 13. Carusi & Miller, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the matter of the Estate of **Benigne Pargny Becker**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the estate of the said deceased has this day been made by Victor Becker.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and in the *Evening Star* previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 3162. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the matter of the Estate of **James C. Reed**, late of U. S. Army, stationed at Washington, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased, not already administered, has this day been made by Patrick H. Lynch, of Bristoe, Prince William Co., Va.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 10 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased, not already administered, should should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.

30 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 20th, 1888.

In the matter of the last Will of **Eliza A. Offutt**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Richard P. Jackson, named as Executor.

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of August, 1888, next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: DORSEY CLAGETT, Register of Wills.

30 J. J. Waters, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of July, 1888.

Augustus W. Daily
v.
Rachel Daily. } No. 11116. Docket 28.

On motion of the plaintiff, by Mr. Wiswall, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce for desertion and adultery.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1888.

Arthur Herbert et al.
v.
John Sibley, Anthony Brenner, Trustee. } No. 11212. Eq. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendant, Anthony Brenner, Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain the appointment of a trustee in place of said Anthony Brenner, under a deed of trust recorded in Liber N. C. T. 57, folio 147, of the land records of the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

(Filed July 17, 1888.)

Milton H. Gettinger
v.
William Gettinger et al. } 11211. Eq. Docket 28.

Ordered this 17th day of July, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee of the real estate described in the said report, filed the 17th day of July instant, be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,575.00.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of July, 1888.

George W. Smith
v.
Mary E. Smith. } No. 11162. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, his solicitor, it is ordered that the defendant, Mary E. Smith, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a decree of divorce from the bond of matrimony on the ground of the desertion of the plaintiff by the defendant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of July, 1888.

Charles H. Wood
v.
Ella J. Wood. } No. 11220. Eq. Docket 28.

On motion of the plaintiff, by Mr. W. T. Johnson, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By L. P. WILLIAMS, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, 1888.

Emma Johnson.
v.
John H. Cook et al. } No. 11119. Eq. Docket 28.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendants, William M. Cook, Joseph T. Settle, and John H. Cook, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have the deed of trust dated on the 3d day of June, 1872, and recorded in Liber 691, folio 164, released. The said deed having been given by Emma Johnson and her husband to John H. Cook, senior, Trustee, now deceased, to secure defendant Settle in the payment of $250.00. It being claimed that said indebtedness has been paid.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, 1888.

Lewis W. Hollinberger et al.
v.
William Cowell et al. } No. 11183. Docket 28.

On motion of the plaintiffs, by Messrs. McGrew & Small, their solicitors, it is ordered that the defendants, William W. Cowell, William Makepeace, Ebenezer C. Millett, Parthenia Durant, Phebe Morrill, Mary Walker, sr., Mary Walker, jr., Society for Increase of the Ministry, Sarah B. Wild, Sarah E. Millett, Eliza H. Smith, Mary T. Derby, and Lucretia Townsend, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to remove cloud on title to lots 68 and 69 Groff's subdivision, square 867, and lots 34, 37, 38, 39, 40, 41, 42, 43, 44, and 45, of Linvilles' subdivision, square 867.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The 10th day of July, 1888.

Amanda Winfree
v.
Hannibal Winfree. } No. 11147. Eq. Docket 28.

On motion of the plaintiff, by Mr. William C. Martin, her solicitor, it is ordered that the defendant causes his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto; and further, that the said plaintiff may have the care and custody of their child. The ground for said dissolution of said bond of matrimony is willful desertion and abandonment.

By the Court. E. F. BINGHAM, Chief Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
28 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of July, A. D. 1888.

Charles Baker
v.
Mary Ann Baker. } No. 11193. Docket 28.

On motion of the plaintiff, by Mr. Fred. W. Jones, his solicitor, it is ordered that the defendant, Mary Ann Baker, cause her appearance to be entered herein on or before the first rule-day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER and the *Washington Critic* once a week for three successive weeks before said rule-day.

The object of this suit is for divorce from the bonds of matrimony, on the ground of willful desertion and abandonment by the defendant of the plaintiff for the full uninterrupted space of two years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk.
28 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Martin O'Donoghue**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

MARGARET O'DONOGHUE,
Adm'x, 28th and O sts. n. w.

29 C. A. Elliot, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Elizabeth Dozier**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of July, 1888.

WILLIAM A. GORDON, Adm'r, 330 4½ st. n. w.

29 No. 3150. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
6th day of July, 1888.

Gussie Lavinia Cox
v.
Eugene R. Cox.
} 11189. Equity Docket 28.

On motion of the complainant, by Charles S. Wilson, her attorney, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this bill is a divorce *a vinculo*. Notice to be published in the WASHINGTON LAW REPORTER and the *Critic*.

By the Court. W. S. COX, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Jackson Lackey**, late of the State of Texas, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

JAS. S. EDWARDS, Adm'r, 500 5th st. n. w.

29 No. 3122. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(Filed July 17, 1888,)

Daniel Loughran
v.
Mary Cunningham et al.
} Eq. No. 11200.

It is ordered this 17th day of July, A. D. 1888, that the sale of the real estate described in these proceedings to Margaret A. Fegan and reported by the trustee, be and it is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

In Re Estate of **Albert B. Baker**, deceased.

Upon consideration of the above petition, it is, by the Court this 20th day of July, A. D. 1888, *ordered* that notice of the above application, in the usual form, to the next of kin of the decedent to show cause, if any, why the same should not be granted, be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before Friday, the 17th day of August, A. D. 1888, to which day at 11 o'clock a. m., the case is hereby continued.

A. B. HAGNER.
A true copy. Test: DORSEY CLAGETT,
Register of Wills.
30 Fred. W. Jones, Proctor.

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American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
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Blackstone's Commentaries (by Benjamin) 1879.
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Falsus in Uno, Falsus in Omnibus.

In Judge Thompson's article in the *Criminal Law Magazine*, on "Cautionary Instructions in Criminal Cases," occurs the following valuable discussion of the maxim, *Falsus in uno, falsus in omnibus:* The judge is at liberty, in the exercise of sound discretion, both in civil and in criminal cases, to give to the jury a caution touching the credence to be given to the testimony of witnesses who have sworn falsely, in conformity with the maxim, "*Falsus in uno, falsus in omnibus.*" This maxim cannot be said to embody either a presumption or a rule of law. As applied to the testimony of witnesses in jury trials, its meaning is that if any witness has willfully or intentionally sworn falsely to a material fact in controversy on the trial, the jury are at liberty, if they shall think proper, to reject the whole of his testimony. It has been held that where there is but one witness in favor of one side of the case, and his testimony is contradicted by other witnesses, such an instruction is not an abstract one, but the giving of it is proper, and the refusal of it is error. From what will presently follow, it will be perceived that the mere fact that a witness makes a misstatement of fact, and afterwards, before finally leaving the stand, desires to make a correction of it, and to state the fact as he remembers it, which he will always be allowed to do, does not justify the court in giving to the jury this cautionary instruction. The maxim is applicable only where the facts indicate that the false statement has been deliberately made and is adhered to by the witness.

The following limitations must be observed in giving such an instruction: 1. The testimony, concerning which the witness has sworn falsely, must relate to a *material* matter in issue on the trial. It is, therefore, error so to frame such an instruction as to tell the jury that "if a witness has sworn falsely to any matter in the case they may disregard his entire testimony,"—omitting the word "material." 2. The false testimony must have been *willful* or *intentional*, or given with a design to conceal or mislead. The mere fact that a witness has made an erroneous statement, through a defect of memory, or otherwise, in good faith, does not require the giving of any cautionary instruction from the bench, though it may be the subject of observation to the jury by counsel in argument. It is accordingly error, in formulating a cautionary instruction under this head, to omit the words "knowingly," "willfully," "intentionally," or some equivalent expression. The judge is not at liberty to say: "If you find that the testimony of A. B. was false," etc., "you may disregard all his evidence." 3. The instruction must not be so framed as to *direct* or *require* the jury to disregard the testimony of such a witness, but it should be so framed as to leave the jury at liberty to believe or disbelieve the witness, accordingly as they are impressed with the credibility of his testimony. Therefore, an instruction which tells them that they *ought* to disregard all the testimony of a witness, provided they believe that he has knowingly sworn falsely to any material fact in the case, is erroneous; or, that "if they believe that any witness has sworn falsely and knowingly as to any material fact, they are *bound* to disregard his testimony altogether." 4. It is error to single out a particular witness, and to direct such a cautionary instruction, although couched in proper terms, against his testimony. The reason is that such a course tends to convey to the minds of the jury the impression that the testimony of the particular witness is disbelieved by the judge, and is to be disregarded—a question which it is their province to determine, and not his. This is especially true where there is nothing in the testimony of the particular witness which requires such a caution.

It is, on the clearest principles, error for the judge to advise the jury that the testimony of a witness who has knowingly sworn falsely to a material fact is to be disregarded or disbelieved, unless corroborated by other testimony, or by circumstances. There is no rule which imperatively requires the jury to reject the testimony of such a witness, and such an instruction clearly invades their exclusive province of saying what witness they will believe and what they will disbelieve. It is to be regretted that any diversity of judicial opinion should have arisen upon so plain a question. We find, however, that the Supreme Court of Georgia has arrived at the conclusion that the true rule, and the one which is proper to be given in charge to the jury when the question arises is that if a witness knowingly and willfully swears falsely in a material matter, his testimony should be rejected entirely, unless corroborated by the facts and circumstances of the case, or by other credible evidence; and that court has held that it is error for the trial court to charge the jury that credit may be given to such a witness, without also stating the necessity for such corroboration.

Instructions under this head are commonly framed in the following language, or in words of equivalent import, the judge having first advised the jury that they are the sole judges of of the credibility of the witnesses: "If you shall believe that any witness has knowingly sworn falsely to any material fact, you are at liberty to reject all or any portion of such witness' testimony." The following, from a case in West Virginia, is a still better model: "If the jury believes from the evidence that any witness who has testified in this case has knowingly and willfully testified falsely to any material fact in the case, they may disregard the whole testimony of such witness, or they may give such weight to the evidence of such witness as they may think it entitled to. The jury are the exclusive judges of the weight of the testimony.—*National Law Review.*

IF a city allows a party to erect a pole in a street, which is a dangerous obstruction, both are liable for injuries sustained thereby by third parties without fault. Wolfe v. Erie, &c., Co., U. S. C. C. (Tex.), Dec. 10, 1887; 33 Fed. Rep., 320.

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Supreme Court of the District of Columbia.
GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

ROBERT A. BALLOCH
v.
WILLIAM R. HOOPER AND THE MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY.

No. 8381. EQUITY DOCKET 22.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

1. When a person does not purport to act for a principal but buys in his own name the principal cannot afterwards adopt the transaction.
2. If, however, he uses the money of his principal, equity will fasten upon the transaction, in behalf of the principal, a constructive trust.

Mr. Justice JAMES delivered the opinion of the court.

S. S. HENKLE and H. B. MOULTON for complainant.

EDWARDS & BARNARD for defendant.

In the case of Robert Balloch v. William R. Hooper and the Massachusetts Mutual Life Insurance Company the record sets forth a somewhat elaborate statement of fact and several questions of law, all of which were considered and discussed by counsel, but which it is not necessary, in the view we have of the case, for us to consider.

Briefly stated it appears that Balloch had purchased a tract of land in Washington, which was laid off in lots with a view to build a number of houses, and that he applied to the defendant insurance company for a loan, through Hooper, who was its agent for the loan of money. He obtained at three different times three loans upon certain conditions, one of which was that a part of the money was to be applied to the extinguishment of existing incumbrances, the main one being the purchase money due upon the property. The insurance company made these loans by sending the money to Hooper, who retained a part of it for the purpose of removing these incumbrances, and, as it is stated in the answer, was to advance the rest as the buildings should progress. A certain portion of each loan was paid over by Hooper, but as Balloch avers not enough, after the application of some of the money to these incumbrances, to enable him to proceed rapidly with the buildings. During this period, for what reason we do not deem it material to consider, Balloch conveyed to Hooper the whole of the property which he had already mortgaged to secure the loan from the insurance company, and in addition six other lots which had not been included in the security. He alleges that there was a verbal agreement between Hooper and himself that the deed though absolute on its face was to be, in fact, a trust; that Hooper was to take the property and apply the money which had been thus far held back to the finishing of the houses, and that they were then to be sold, and the proceeds divided in certain proportions. On the other hand, Hooper denies this alleged verbal agreement, and the insurance company denies ever having heard of it.

Whatever the agreement was, it is manifest that the conveyance was in some way to stand as a security, because Balloch conveyed to Hooper more than the land included in the trust to the insurance company. We think that fact clearly indicates that there must have been a contract or understanding that the conveyance was to be regarded as some sort of security. Had Balloch's purpose been merely to give up the enterprise he would not have given, in addition to the property that was included in the deed of trust, these six lots. So far then as Hooper is concerned we are of opinion that his intention was to take this as security for Balloch's debt. Hooper sets up in his answer that he took this conveyance for the purpose of better securing the payment to the company, but there is nothing to show that the insurance company knew of that transaction at the time.

The answer of the company states that it did not know of it until a little more than seventeen months afterwards. The houses for some time after this last conveyance still remained unfinished. Thereupon Hooper, being without the means to do so, appealed to the insurance company to carry on the building enterprise to completion. He undertook, if the company would supply him with the money, to step, as it were, into Balloch's shoes and finish the houses. The result was that the insurance company then agreed to deliver up Balloch's notes and execute releases of the deeds of trust on the property and advance further moneys for the finishing of the work. All of which was accordingly done, the company taking Hooper's note for $71,000 to secure its past and future advances.

It appears that besides the money previously advanced to Balloch it cost some $20,000 to finish the houses. Balloch says that the agreement was that they were to be finished on his account and that this expenditure of $20,000 was greatly in excess of what the houses should have cost and that he is entitled to an account and to have his agreement with Hooper carried out.

Now, on such a transaction, what are the rights of the parties? It appears that Hooper did not communicate with the company that he proposed to buy on their account; they knew nothing about it for seventeen months, and he took the title to himself. In such a case as that there can be no application of the ordinary principles of agency or of trust. When a person does not purport to act for a principal but buys in his own name, the principal cannot afterwards adopt the transaction: Of course, if he uses the money of his principal, a court of equity would fasten upon the transaction in behalf of the principal a constructive trust. But Hooper did not use the money of his alleged principal. Whatever agreement he made with Balloch he made in his own name and upon its face for his own benefit. We do not perceive any way in which the principal could claim to adopt that arrangement or in which it should be bound by any terms which Hooper had entered into. The transaction did not purport to to be in behalf of the principal, and the latter's means were not engaged or used at that time. We cannot, therefore, impress upon it the character of a trust or regard it as an act of agency which might be afterwards ratified.

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It results that the insurance company was a stranger to the contract between Balloch and Hooper. It is not shown that it was even aware of the terms of the contract. All that it did was to release its original trust from Balloch and take Hooper as the debtor, which might well be done because the land was bound for the whole of the debt. Hooper took the property from Balloch subject to its being swept away from him by a foreclosure of that trust. In such a situation he undertook to become personally liable for the debt by giving the note for $71,000.

We do not perceive that there is a legal or equitable connection established with the insurance company so as to show a trust on their part for the benefit of Balloch, and if that is the case, it is entirely immaterial whether these houses cost an extravagant and even a fraudulent price or not. That does not concern Balloch; it is a matter which lay between Hooper and the insurance company. Hooper is a principal, and if he borrowed $20,000 for this purpose unnecessarily and unnecessarily expended it, or even was guilty of fraud, it was a fraud against the insurance company. The insurance company does not claim any absolute title. It claims only a lien for its advances, and it is only to be protected to that extent. That leaves the question of the right to redeem between Balloch and Hooper, and, as between them, we think it quite clear that Hooper took his conveyance as a security and not as an absolute deed. Balloch, then, is the owner of the equity of redemption, but he will have to redeem as the transaction was made between Hooper and the insurance company, which, according to the auditor's report, will require $52,000. It may be that Balloch has suffered a wrong, but we cannot do anything more than to allow him to redeem the property at that rate.

The decree below is affirmed.

SUPREME COURT OF PENNSYLVANIA.

HARLEY v. LEBANON MUT. INS. CO.

In an action on a fire insurance policy the declaration averred that the defendant company issued the policy to H., the contract being that for a valuable consideration the company "should be liable to pay or make good to the said assured, their and his executors, administrators and assigns, all such loss or damage, not exceeding the insurance, as should happen by fire to the property as above specified." This was preceded by an averment of assignment by the assured to plaintiff of "all his right and interest of, in and to the said assured property * * * and also all his title and interest in said policy of insurance, and all advantages to be derived therefrom;" and followed by an averment that, from the date of assignment up to and including the date of loss, plaintiff was the sole owner of the insured property. *Held*, that this alleged substantially a contract of indemnity with plaintiff as assignee and stated a good cause of action.

Where profert is made of the contract sued on, but oyer is not craved, the court must look only to the declaration for the terms of the contract.

This was an action on a policy of insurance against fire, brought in the name of P. D. Harley to the use of D. J. Harley, assignee, against the Lebanon Mutual Insurance Company. There was a verdict for plaintiff, but the court sustained a motion in arrest of judgment; the following opinion being delivered by Sittser, P. J.: "We will first dispose of the motion in arrest of judgment. On the trial of the cause we submitted to the jury the issue which had been made by the pleadings. This was determined by the plaintiff. It remains to be considered whether a verdict for the plaintiff upon the issue tried will entitle the plaintiff to judgment. The declaration avers that the defendant, on the 7th of January, 1880, insured certain goods of D. J. & P. D. Harley, in the partnership name of P. D. Harley, for three years. On the 13th of January, 1883, the policy was renewed for three years. On the 18th day of September, 1884, P. D. Harley assigned all his interest in the property and the policy of insurance to D. J. Harley. The loss by fire occurred on the 14th of June, 1885. It is averred, substantially, that the defendants insured the property of a firm in the firm name; that afterwards one of the two partners assigned all his interest to the other along with the policy, and then the loss occurred. The loss was D. J. Harley's. If he had a contract of indemnity with the company, he can recover; otherwise, not. Is a contract of that character averred in the narr., and have the jury in their verdict found that such a contract existed? A recovery cannot be had in the name of the firm. It must be in the name of D. J. Harley. Where the policy only is assigned, and the property remains in the person to whom the policy is issued, an action may be brought in the name of the insured to the use of the assignee. In the absence of prohibitory provisions upon the subject, the insurer can have no objections to the use party. If the assured has a legal claim, it is of no consequence to the insurer that the legal plaintiff has directed that the sum due, when so recovered, should be paid to another. But, when the property insured has been assigned, no action can be maintained in the name of the assignor. He has sustained no loss. The loss is that of the purchaser, and owner of the property; and, to enable him to recover, he must aver and prove a contract to that effect with the defendant. If authority be needed for so plain a proposition, it will be found in Wood, Ins., c. 10, pp. 572–574. The defect in bringing the action in the firm name to the use of D. J. Harley can be cured by amendment. But the want of an averment of contract between D. J. Harley and the defendant cannot be now supplied in that manner. We have examined the narr. carefully, and do not find a contract of indemnity by the defendant to J. D. Harley averred, or any facts set forth which would justify such an averment. Where the property and the policy have both been assigned, the company may accept the assignee in the place of the assignor. But to do so requires action of some sort upon their part. We can find nothing in the narr., whether taken separately or altogether, which amounts to a recognition of liability to D. J. Harley upon the policy in suit. The rule for a new trial is discharged, and the motion in arrest of judgment is sustained." Plaintiff brings error.

All questions of fact properly presented by the pleadings and evidence were definitely settled by the verdict in favor of plaintiff, and he

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is entitled to judgment thereon for the amount found by the jury, unless the declaration is radically defective, not in form, but in substance. Merely formal defects, amendable in the court below, may be treated as amended here. Judgment was arrested on the sole ground that the declaration is insufficient to support the verdict, and that action of the court below is the subject of complaint in the several specifications of error. As correctly stated by the learned president of the common pleas, it is substantially averred in the declaration that defendant company insured the property of the firm, composed of D. J. and P. D. Harley, in the firm name of P. D. Harley; that afterwards P. D. Harley, one of the firm, assigned all his interest therein, together with the policy of insurance, to his copartner, D. J. Harley, and thereafter the loss by fire occurred. That loss was D. J. Harley's; and, if it is substantially averred that he, as such assignee, had a contract of indemnity with the company defendant, the declaration is sufficient. Profert of the policy was made, but oyer was not craved. We must therefore look to the narr. for the terms of the contract. Steph. Pl., 68. 69; Bender v. Fromberger, 4 Dall., 436–440—in which it was held that, "oyer not having been prayed, no part of the deed appears to the court but that which the plaintiff has declared on." In this case the contract, as set forth in the declaration, is, in substance, that, upon a "valuable consideration," the defendant "company should be liable to pay or make good to the said assured, their and his executors, administrators and assigns, all such loss or damage, not exceeding the insurance, as should happen by fire to the property as above specified." This is preceded by the averment of assignment, September 18, 1884, by P. D. Harley to D. J. Harley of "all his right and interest of, in and to the said assured property * * * and also all his title and interest in said policy of insurance, and all advantages to be derived therefrom;" and followed by the further averment "that from the said 18th day of September, 1884, up to and including the day the same was lost, injured and destroyed by fire * * * he was the sole and exclusive owner of the insured property," etc. The contract thus averred in the narr.—and under the pleadings we have no right to go outside of it—is substantially a contract of indemnity with the assignee, and, in the absence of any qualifying provision, must be so held. It follows, therefore, that the declaration exhibits a good cause of action, quite sufficient to sustain the verdict, and justify the defendant company in paying the amount thereof.

Judgment reversed, and judgment is now entered against defendant, on the verdict, for $537.50, with interest from January 15, 1887, the date of said verdict.

WHEN the lease provides that the crop shall belong to the landlord until the tenant performs certain conditions, a purchaser of the leasehold, under execution against the tenant, cannot claim the crops against the landlord when the conditions have not been performed. Farnum v. Hefner, S. C. Cal., Jan. 25, 1888; 16 Pac. Rep., 324.

NEW YORK SUPREME COURT.

SPECIAL TERM.

ISAAC H. BAILEY, AS ASSIGNEE IN BANKRUPTCY OF DANIEL DREW, *plaintiff*, AGAINST DANIEL DREW CHAMBERLAIN AND OTHERS, *defendants*.

Daniel Drew, in November, 1873, a short time prior to his being adjudicated a bankrupt, gave defendant, Chamberlain, 168 bonds of $1,000 each, par value, as collateral security for a note for $118,297.55 made by Drew, payable on demand. In this action by Drew's assignee for an accounting from Chamberlain.

Held, That the title to the bonds remained in the pledgor until it was divested by a sale upon notice, or by judicial proceedings, and the time within which plaintiff, the assignee in bankruptcy, to whom title to the bonds passed, can bring this action is limited to two years from the time when the cause of action accrued.

The right to invoke the aid of a court of equity to ascertain the amount due upon an obligation secured by the pledge of personal property is a continuing right, and continues as long as the right to redeem exists.

The cause of action does not depend upon the rights of the parties as they existed at the time of the pledge, but depends upon the right of the pledgor to redeem at the time the bill was filed, and the cause of action upon which such bill is founded accrues, not when the collateral security was first pledged, but when the right to redeem was first insisted upon, namely, upon the filing of the bill.

INGRAHAM, J.—On the 24th of November, 1873, the defendant, Chamberlain, was the owner of a note made by Daniel Drew, payable on demand, for the sum of $118,297.54, and on that day there was delivered by Drew to Boyd for Chamberlain one hundred and sixty-eight bonds of $1,000 each, and of the market value of about $120,000. The transaction was between Drew, the maker of the note, and Boyd, acting on behalf of Chamberlain. Drew was about making an assignment or transfer of a large amount of bonds and other securities to his son, William H. Drew, and Boyd insisted that Drew should protect Chamberlain. Drew finally consented that the one hundred and sixty-eight bonds should be set aside for Chamberlain, and Boyd told Drew that the bonds were set aide as security for the note.

Not a word appears to have been said about the payment of the note. The note itself was not delivered to Drew, but was returned to Chamberlain, and Chamberlain subsequently indorsed upon the note the payments of interest down to 1876. The note was produced by Chamberlain on the trial.

On these facts it is clear that the note was not paid by the delivery of the bonds to Chamberlain. Nor was the obligation of Drew to pay the note affected, but the bonds were delivered as collateral security for the payment of the note.

The relation of bailor and bailee was thus created, and such relation existed at the time that Drew was adjudicated a bankrupt and plaintiff was appointed his assignee.

By the pledge of these bonds as security for the notes, the title to the bonds did not pass to the pledgee. The title remained in the pledgor until it was divested by a sale upon notice or by judicial proceeding (Markham v. Jaudon, 41 N. Y., 235; Stern v. Marsh, 4 Denio, 230).

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On Drew being adjudicated a bankrupt, and on the assignment of his property to the plaintiff, the title to the bonds passed to the plaintiff, and he became the owner of the bonds, subject to the special property in Chamberlain as pledgee.

Until the pledgor's title had thus become divested he had the right to the possession of the bonds on payment of the amount due to the pledgee and interest, as on the payment of that amount the special property which the pledgee had in the bonds ceased, and the right of possession became merged in the legal title. This right to redeem continued until the title of the pledgee was divested either by the sale on notice or by legal proceedings.

The enforcement of this right depended upon the ownership of the bonds, and the Statute of Limitations restricting the time in which legal proceedings must commence, does not limit this right of redemption, for by such redemption the special property of the pledgee ceased, and as the title of the pledgor cannot be divested except by a sale on notice or by legal proceedings, his title to the property remains unaffected by the lapse of time until the pledgee takes the necessary proceedings to divest it. As an incident to this right of redemption, the pledgor has the right, where the amount due on the obligation to secure which the pledge was given is uncertain, to come into a court of equity and ask to have the amount ascertained, and on payment of such amount to recover the possession of the pledge (Kent v. Westbrook, 1 Vesey, 278), and that is the right plaintiff seeks to enforce in this action.

The defendant pleads the Statute of Limitations, and whether or not that action is barred by the statute is the main question to be determined.

The defendant relies first upon the provisions of the bankrupt law, which provides for actions by and against assignees in bankruptcy. That provision is as follows: "No suit, either at law or in equity, shall be maintained in any court between an assignee in bankruptcy and a person claiming an adverse interest touching any property or rights of property transferable to or vested in such an assignee, unless brought within two years from the time when the cause of action accrued for or against such an assignee. (Revised Statutes U. S., Sec. 5057).

The time in which an assignee in bankruptcy can bring an action is here limited to two years from the time when the cause of action accrued for or against the assignee, and if this cause of action accrued more than two years before the action was brought, the defendant is entitled to judgment.

That Drew had a cause of action to redeem the day the bonds were delivered, cannot be disputed; but is the cause of action that then accrued the cause of action which is here sought to be enforced?

That question is answered by the case of Miner v. Beekman (50 N. Y., 343). That was an action brought by the mortgagee to redeem from a mortgage. The mortgage was made much more than ten years prior to the commencement of the action and the defendant pleaded the ten years' Statute of Limitations and had judgment below.

The Court of Appeals, in reversing the judgment, said: "The argument upon that point for the defendant is that the mortgagor, upon the moneys becoming due, had the right to come into a court of aquity and have the amount of the lien determined and disoharged of record upon payment. So far, his position is correct. But is the deduction therefrom equally sound—that is, that this right is barred by the statute after the lapse of ten years? * * * It is an acknowledged branch of equity jurisdiction to remove clouds from the title at the suit of the owner of the fee. Such owner has a right to invoke this aid. But must he do so within ten years after the commencement of the cloud, or may he do it at any time during its existence while he continues such owner? My conclusion is that this is a continuing right, that it may be acted on at any time during the existence of the cloud—never barred by the Statute of Limitations while the cloud continues to exist. This results from the continuing character of the right, which is equally as potent after the lapse of eleven years as it was during the first ten."

Applying this principle to the question here, it is clear that the right to invoke the aid of a court of equity to ascertain the amount due upon an obligation secured by a pledge of personal property, is a continuing right and continues as long as the right to redeem exists.

The same principal was applied in an action for the conversion of a pledge in Roberts v. Berdell (15 Abb. N. S., 183). There the loan for the payment of which certain bonds were pledged had been paid more than six years before the commencement of the action, but the demand for the return of the bonds and the refusal of the pledgee to comply was within six years.

It was held by the court of appeals that the cause of action accrued on the conversion of the bonds and there was no conversion until the time of the refusal; that a mere omission of the defendant (the pledgee) to return the bonds after the payment of the debt was not a conversion.

The pledgor being the owner of the bonds, has, therefore, the right to redeem by the payment of the amount due upon the obligation to secure which the bonds were pledged, and, where the amount due is uncertain, he has a right to apply to the court to have that amount ascertained.

That cause of action does not depend upon the right of the parties as they existed at the time of the pledge, but depends upon the right of the pledgor to redeem at the time the bill was filed, and the cause of action upon which such bill is founded accrues not when the collateral security was first pledged, but when the right to redeem was first insisted upon, viz., upon the filing of the bill, and the plaintiff having succeeded to Drew's title to the bonds by the bankruptcy proceedings and that title never having been divested, such right to redeem existed at the time of the filing of the bill.

I have examined the cases cited by the defendant in the Supreme Court of the United States, but none of them determined the question here presented. In all the cases in which the defense of the statute has been sustained, the right to commence the proceedings accrued more than

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two years before such proceedings were commenced, and in Baily v. Glover (21 Wallace, 346) and the cases that have followed that decision, it was held that where fraud was charged the cause of action did not accrue until the discovery of the fraud. Thus recognizing the distinction between the vesting of the right of action in the assignee and the accruing of the cause of action in his favor, and that although the action was not brought within two years after the appointment of the assignee, that did not bar the action, unless more than two years had elapsed after the cause of action accrued.

The defendant also relies upon the Statute of Limitations in this State (section 382 and 388 of the Code); but the plaintiff has under those sections ten years in which to bring his action after the cause of action accrued, and it appears from what has been said that such cause of action accrued on filing the bill.

The case of Robert v. Sykes, (30 Barb, 173) must be considered as overruled by Miner v. Beekman (*supra*).

Nor does the refusal of Chamberlain to recognize Drew's right to the bonds or any portion or them help the defendants. The application to Chamberlin was made by Boyd, but so far as appears without Drew's knowledge or procurement. Whatever interest he had in them passed to the plaintiff, and the transaction between Boyd and Chamberlain was not known to either Drew or the plaintiff.

I have come to the conclusion, therefore, that the Statute of Limitations is no bar to this action, and the plaintiff is entitled to a decree for an accounting to ascertain the amount due to Chamberlain from Drew.

I think, however, on the evidence in this case that the defendant, Chamberlain, is entitled to hold these bonds as security for the Albany and Susquehanna bonds delivered by him to Drew, and sold by Drew, and also for the amount of $30,000 paid by Chamberlain to Drew's son at Drew's request.

Boyd testified that at the interview at which Drew delivered the bonds to him on account of Chamberlain, that Boyd insisted that he (Drew) should protect Chamberlain, that Boyd wanted it fixed so that there could be no question about the protection of Mr. Chamberlain and his wife and children, and that for that purpose Drew consented that the bonds should be set aside for Chamberlain.

It is clear that this gave to Chamberlain the right to hold the bonds until all obligations due from Drew to him had been paid, and the evidence in this case establishes that Drew was at the time indebted to Chamberlain, in addition to the note, the amount of $30,000, which Chamberlain paid to William H. Drew at Daniel Drew's request and on his agreement to make it right.

The evidence also establishes that the eighty Albany and Susquehanna bonds were sold by Chamberlain to Drew and by him sold and applied to his own purposes and that that amount had never been repaid to Chamberlain.

The decree should, therefore, provide that it be referred to a referee to ascertain and report how much is due to Chamberlain upon the note for $118,000 and the $30,000 paid by Chamberlain to Drew and the proceeds of the Albany and Susquehanna bonds sold by Chamberlain to Drew and that upon the payment of the balance due that Chamberlain or his assignees transfer the bonds remaining unsold to plaintiff.

Findings and judgment to be settled on notice. —*The Daily Register.*

MARYLAND COURT OF APPEALS.

HALLE v. NEWBOLD.

Decided June 13, 1888.

A grantor may impose a restriction in the nature of an easement or servitude upon land sold or retained by him; and the servitude may be either upon the land sold in favor of the land retained, or upon the land retained in favor of the land sold.

The owners of land created an easement or servitude on their land by prescribing the size of houses to be built thereon, and binding by express terms their heirs and assigns, in favor of certain other land, and the heirs and assigns of its then owner. This covenant may be enforced against any assignee, with notice, of the servient estate.

Land subject to an easement or servitude prescribing the size of houses to be built thereon is incumbered, and the title is not clear.

Appeal from the Circuit Court of Baltimore City.

STONE, J.—In 1855 the heirs of Caroline Donaldson owned in fee a tract of land lying on Fulton street in Baltimore City. Thomas Donaldson, who was one of the heirs of Caroline Donaldson, took in 1855 a deed from the other heirs for a lot on Fulton street to himself in severalty.

In the deed from the other heirs of Caroline Donaldson to Thomas Donaldson there is this covenant.

"And the said parties of the first part (the grantors) hereto for themselves, their heirs, executors, administrators and assigns, do hereby covenant with the said Thomas Donaldson, his heirs and assigns; that no improvements shall be built upon any of the lots now belonging to the parties to these presents, and binding upon said Fulton street, inferior to that which George B. Tyler and John M. Jenens have contracted with the party of the second part hereto (Thomas Donaldson), severally to erect on the pieces of ground hereinbefore described and conveyed, which said party of the second part has contracted to sell in two lots of equal size to said Tyler and Jenens, to wit: a house not less than twenty feet on said Fulton street, and of proportional depth and three stories in height, or a cottage equal in value, as an improvement to such a house as that just described."

Thomas Donaldson subsequently died, leaving Mary E. P. Donaldson, his wife, all his real estate for life with full power of sale. In March, 1888, the said Mary E. P. Donaldson and the other heirs of Caroline sold and conveyed a lot of land on Fulton street to David M. Newbold, in fee, "subject, however, to the operation and legal effect, if any, of the covenants contained in a deed from John J. Donaldson et al. to Thomas Donaldson, recorded among the land records of Baltimore City aforesaid, in Liber E. D., No. 99, folio 162, &c., and of the covenant between John J. Donaldson et al. and John W.

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Jenens et al., recorded among the land records aforesaid, in Liber G. E. S. No. 185, folio 252, &c.

Newbold subsequently leased a part of said lot fronting fourteen feet eight inches on Fulton street to George H. Callis, and then sold the rent reserved in said lease to Philip Halle, the appellant, to whom he guaranteed a clear title.

The question of the effect and operation of the covenant in the deed of 1855 from the heirs of Caroline Donaldson to Thomas Donaldson is the one presented for our determination.

It is apparent, from the above statement of facts, that if the covenant in the deed of 1855 from John Donaldson et al. to Thomas Donaldson is effective either because it runs with the land, or can be enforced by a court of equity as an easement or servitude, that the title is not clear, but incumbered with conditions that may most materially affect the value of the lot. A house of twenty feet front cannot be built on a lot of fourteen feet eight inches, and the purchaser has only the chance between leasing the lot unimproved, or purchasing the right to build a house of less frontage by procuring a release of the condition.

We cannot distinguish this case in principle from the case of Thruston v. Minke & Humbirg, 32 Md. In that case Thruston and Minke were tenants in common of a hotel and a vacant lot adjoining in the town of Cumberland, Thruston owning one and Minke three-fourths of the property. Thruston leased to Minke for a long period his interest in the vacant or unimproved part of the property. It was provided in the lease that the lessee should not erect any building on the vacant lot which should be higher than the present level of the third story floor of the hotel building. Thruston filed a bill in equity alleging that Minke was about to construct a building on the vacant lot higher than was permitted by the covenant in the lease and praying for an injunction.

This court decided that the effect of the condition in the lease was to create a right or interest in the nature of an incorporeal hereditament or easement, appurtenant to the contiguous hotel property, and arising out of the parcel of land demised by the lease.

In support of the conclusion they reached in that case this court quotes with approval the cases of Whitney v. Union R. Co., 11 Gray, and the case of Clark v. Martin, 49 Pa.

In the former of these cases (which is also referred to with approval by Washburn in his work on Easements) the court says: "When it appears by a fair interpretation of the words of a grant, that it was the intent of the parties to create or reserve a right in the property granted, for the benefit of the other land owned by the grantors, and originally forming with the land conveyed, one parcel, such right shall be deemed appurtenant to the land of the grantors and binding on that conveyed to the grantee, and the right and burden thus created will respectively pass to and be binding on all subsequent grantees of the respective parcels of lands."

In the latter case, Clark v. Martin, a man by the name of Henry owned adjoining lots. He sold one with a condition in the deed, that no building was to be erected on the back part of the lot higher than ten feet. This lot passed successively to five different owners with the same condition in each deed. Henry died seized of the other lot, and after his death it was sold to Clark. The question was whether Clark could compel Martin, the then owner of the other lot, to comply with the conditions, and the court decided that he could. The opinion is quoted at length in Thruston v. Minke and Humbird, and in the main takes the same views that the court in Whitney v. Union R. Co. took.

These cases very conclusively settle the law that a grantor may impose a restriction, in the nature of a servitude or easement, upon the land that he sells or leases, for the benefit of the land he still retains; and if that servitude is imposed upon the heirs and assigns of the grantee, and in favor of the heirs and assigns of the grantor, that it may be enforced by the assignee of the grantor against the assignee, with notice, of the grantee.

It will be observed that in each of the cases above cited the grantor imposed the servitude or conditions upon the land he sold, in favor of the land that he retained.

In the case at bar the grantors imposed the conditions upon the land they retained in favor of the land they sold. But the principle is the same in both cases. In Trustees v. Lynch, 70 N. Y., the court says:

"An owner may subject his lands to any servitude, and transmit them to others charged with the same; and one taking title to lands with notice of any equity attached thereto, or any outstanding right or claim affecting the title or the use or enjoyment of the lands, takes subject to such equities and such rights or claim and stands in the place of his grantor, bound to do or forbear to do whatever he would have been bound to do or forbear to do. This rule is of universal application."

When, therefore, the heirs of Caroline Donaldson created that easement or servitude on their own lands, binding by express words their heirs and assigns in favor of the land then owned by Thomas Donaldson, and by equally express words made the servitude attach to his heirs and assigns, such covenant can be enforced by and against any assignee with notice.

It follows from what we have said that the land sold by Newbold to Halle is incumbered by the condition referred to, and that the title is not clear.

In the view we have taken of the case, we deem it unnecessary to decide the question whether the covenant in the deed runs with the land or not. That question we think immaterial in this case, in view of the fact that the covenant is a binding one, and will be enforced upon proper application; and such was the view taken by the court in 70 N. Y. above cited.

We must, therefore, reverse the decree and remand the case.

WHEN the grantor died soon after making a conveyance, and his heirs lived in another State and knew nothing of the transaction for eighteen months afterwards, but soon as they heard of it investigated it and brought suit in a few days—a little less than three years after the deed, alleged to have been procured by fraud, was made: *Held*, that they were not guiity of laches.—Fellows v. Hyman, U. S. C. C. (Colo.)

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The Nemesis of the Prosecution.

In his recent treatise on Criminal Evidence, Mr. Wharton states the rule, without hesitation, in criminal cases to be that the prosecution is usually bound to call all the attainable witnesses to a transaction, which is the subject of examination, and that this shall be done even if they give different accounts; for he thinks it is fit that the jury should hear their evidence, so as to draw their own conclusions as to real truth of the matter. Whar. Crim. Ev., sec. 448, 9th Ed.

It will be observed that the enforcement of this rule will require the prosecution to call such witnesses as is contemplated under the rule, whether the testimony be for or against the prosecution. While the author amply sustains the text with both English and American decisions, and cites nothing *contra*, yet it seems to provoke earnest resistance on part of the prosecution on all occasions where the principle is sought to be enforced. * * * The modern idea, and the one best comporting with good morals, seems well set forth by Mr. Wharton in his work on Crim. Pl. and Prac., sec. 550.

"It is," he says, "scarcely necessary to say that a prosecuting attorney is a sworn officer of the Government, required not merely to execute justice, but to preserve intact all the great sanctions of public law and liberty. No matter how guilty a defendant in his opinion be, he is bound to see that no conviction shall take place except in strict conformity to law. It is the duty, indeed, of all counsel to repudiate all chicanery and all appeal to unworthy prejudice in the discharge of their high office; but eminently is this the case with public officers, elected as representing the people at large, and invested with power which belongs to official rank, to comparative superiority in experience and to the very presumption here spoken of, that they are independent officers of State."

In dealing with the ethics of the practitioner, of course, the courts and the law writers can deal only with the high standard of virtue, experience, ability, fairness and justice contemplated in the "presumptions" spoken of by Mr. Wharton. Therefore it must be taken that it was from this standard of official excellence that the English courts established the requirement of public prosecutors which is adopted as a rule of evidence by Mr. Wharton, as above cited, and which is the subject of this article. In view of the fact that the prosecuting officer represents the public at large, and must have no private ambitions to gratify, whose duty it is to see that no conviction shall take place except in strict conformity with law, whatever may be his private opinion: and in view of the further fact that *truth* should be the object in all legal investigations: that every man stands in the eye of the law presumably innocent, until he is *proven* guilty, that no advantage should be taken of and no unnecessary burdens thrown on the accused, it would seem such antagonism as is shown by prosecutors against the rule announced is unwarranted, especially since by their elevation to public office they are presumably capable of judicial action and beyond the reach of being imposed upon. * * * *

Those who urge this rule of evidence say they might content themselves with the rule as sanctioned by the books, without contradiction, simply because it is law and silences all contrary reason. In answer to this, those who oppose contend that the rule grew out of the fact that in England, under the common law, no counsel was allowed a prisoner upon his trial, upon the general issue, in any capital crime. "A rule," says Blackstone, "which, (however it may be palliated under cover of that noble declaration of the law, when rightly understood, that the judge shall be counsel for the prisoner, that is, shall see that the proceedings against him are strictly legal and strictly regular) seems not to be at all of a piece with the rest of the humane treatment of prisoners by the English law." They contend that as English judges were supposed to be counsel for the accused, they made the prosecuting officers for the crown call the witnesses, or called and examined them themselves, and that as the reason, or cause of the rule has ceased, the rule itself should cease. This is pure sophistry, for it may be suggested that it is strange that such judges and law-writers as those who have been quoted, and who have lived since this rule of the English common law was abrogated by statute, did not discover this reason, and that they would still foster a rule with a dead source.

It is also contended that the court may be imposed upon by unscrupulous and unreliable witnesses, and thus compel the Commonwealth's officer to vouch for them by introducing them as his witnesses. This is wholly untenable, because of all the instances this is the least apt to work imposition on the court or jury, for the witness is practically cross-examined by both parties; and as the judge has interfered, invokes his unusual scrutiny. Furthermore, the court has ample power and discretion in ascertaining the character, standing and peculiar situation of such witness as would entitle the accused to insist on his production before enforcing the rule. The court can, under all circumstances, take care of itself in such a case.

In this connection it is also contended, perhaps more strongly than upon any other ground, that the rule is harsh and unjust because "when a party offers a witness in proof of his cause, he thereby, in general, represents him as worthy of belief," and that the law will not permit the party afterwards to impeach such witness. "But," says Greenleaf, "to this general rule there are *some exceptions;* for where the witness is not of the party's own selection, but one whom the *law obliges him to call*, such as the subscribing witness to a deed, or a will *or the like;* here he can hardly be considered as a witness of the party calling him, and, therefore, as it seems, his character for truth may be generally impeached." 1 Greenl. Ev., sec. 443. So there is nothing in that objection. It may then be asked, why should the prosecution be required to call the witness if it is not bound to accredit him? Because it does accredit him if unable to destroy his veracity; because the guilt of the accused should be established beyond a reasonable doubt by the prosecution; because the burden of proof is upon the prosecution to sustain every material allegation going to make up guilt; because no mere naked presumptions of law should produce

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guilt when the actual facts will disprove or explain it; because the best evidence attainable should be produced; because innocence is presumed until guilt is shown by the prosecution; because no unnecessary burdens should be thrown on the accused; because all that constitutes the *res gestæ* should be brought out by the prosecution, if attainable; and finally, because the object of this rule of law is truth and the protection of the people.

This question is a highly practical one, and the rule seems founded in justice and free from serious objection.—*S. C. Graham in Virginia Law Journal.*

Notes of Cases.

In a recent case the Supreme Judicial Court of Massachusetts—Gillespie v. Rogers, 16 *No. East. Rep.*, 711—under a statute that instruments, good as between the parties, become, by recording, good as to third persons, considered the effect of the grantor signing a deed under a name by which he was generally known, omitting an initial of his real name. The court said: "There can be no doubt that the deed which was executed by James N. Howes, in which he called himself James Howes, was good as against him and his heirs and devisees. The omission of the initial letter of his middle name did not vitiate the grant; and it was competent to show that he was as well known without a middle name as with one. Shep. Touch., 232, 233; 3 Washb., Real Prop., 236, 239; Games v. Stiles, 14 Pet., 322, 327. The same rule exists in case of a mistake in the name of the grantee (Hall v. Leonard, 1 Pick., 27, 30; Thomas v. Marshfield, 10 Pick., 364, 367; Scanlon v. Wright, 13 Pick., 523; Peabody v. Brown, 10 Gray, 45); and it is not absolutely necessary that either grantor or grantee be named at all, if so described that he can be clearly ascertained (Shaw v. Loud, 12 Mass., 447; Shep. Touch. and Washb., Real Prop., *ubi supra;* Reeves v. Watts, 7 Best & S., 523; Maugham v. Sharpe, 17 C. B. N. S., 443). It is contended, however, that the record of the deed signed 'James Howes' did not give a good constructive notice of a conveyance of the title of James N. Howes. But, since the deed was valid as against the grantor and his heirs and devisees without registration, it would seem that the registration would make it valid as against all persons. Such seems to be the effect of the statute. Rev. St., Chap. 59, Secs. 1, 28. The title passed by the deed, not by the registration; but to give this title full effect, and prevent its being questioned by purchasers and creditors of the grantor, there must be actual notice of the deed, or registration, which is constructive notice. Dole v. Thurlow, 12 Metc., 157, 162; Earle v. Fiske, 103 Mass., 491. And such actual or constructive notice has the effect to bind others, in like manner as the grantor and his heirs and devisees are bound by the mere execution and delivery of the deed. It makes no difference if the constructive notice provided for by law proves insufficient. A deed is considered to be recorded when it is noted by the recording officer as having been received for record, in the book kept for that purpose (Rev. St., Chap. 59, Sec. 24; Gen. St., Chap. 17, Sec. 94; Pub. St., Chap. 24, Sec. 16); and if the recording officer places upon it his certificate that it has been so received, even though he afterward fails in his duty, by recording it inaccurately, by omitting material portions of it, or even by altogether suppressing it from the records, yet in contemplation of law, the whole world has constructive notice of it, just the same as if it had been accurately copied in full upon the records (Tracy v. Jenks, 15 Pick., 465; Ames v. Phelps, 18 Pick., 314; Jordan v. Farnsworth, 15 Gray, 517; Fuller v. Cunningham, 105 Mass., 442; Adams v. Pratt, 109 Mass., 59; Wood v. Simons, 110 Mass., 116; Sykes v. Keating, 118 Mass., 519; Getchell v. Moran, 124 Mass., 405).

"It is obvious that under this rule one searching the records may fail to find all that is necessary for his protection; but nevertheless, he he will be bound. In other respects, also, the records of deeds, may fail to give full information as to the title. For example, an apparently perfect record title may be bad because the grantor in a deed may have been disseized or insane, or because the title has been defeated by an adverse possession. In either of these cases, resort must be had to extrinsic evidence to determine where the title is, and whoever searches the title upon the records, if he would be absolutely safe, must do so with a knowledge of facts not disclosed by the records themselves. In like manner, where deeds or other instruments requiring to be recorded are given or received by persons or corporations known by different names, the records may fail to furnish exact and literal information; and yet, where the instrument itself is a genuine one, and has been executed in good faith, the record has been held sufficient to furnish constructive notice of the real transaction. A striking illustration of this is found in a former decision of this court. Statutes of 1865, Chapter 43, Section 2, provided that no assignment of future earnings should be valid against a trustee process unless recorded in the Town or City Clerk's office before the service of process. A man by the name of Germain Sirois, who was also sometimes called John Keever, made an assignment of his future earnings under the name of Joseph Cyr which name he signed by his mark, being unable to read or write. This was duly recorded. There was no intention of misleading anybody by the wrong name affixed to the assignment. Il was a mistake; the man being an ignorant foreigner, who could not speak English. Afterward a creditor brought a trustee process. It was held that the assignment was good as between the original parties to it, and, being recorded, was good as against attaching creditors. Ouimet v. Sirous, 124 Mass., 162. See, also, Grifford v. Rockett, 121 Mass., 431; O'Conner v. Caran, 126 Mass., 117. So, in the present case, it being found as a fact that the grantor was as well known, in the town where he lived, by the name of James Howes, as by his true name of James N. Howes, the record of his deed, under the name of James Howes to Henry N. Howes, was constructive notice of the real transaction between those parties. Nor can it be doubted that it would have proved sufficient for the protection of the tenant if he had taken pains to examine the records. Judgment for the defendants." —*New York Law Journal.*

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THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

July 30.

11274. Commissioners of the District of Columbia v. E. Francis Riggs et al. For conveyance. Com. sol., H. E. Davis.

11275. Louisa G. Mueller v. Charles P. Mueller. For divorce. Pffs atty, Irving Williamson.

July 31.

11276. New Orleans Baseball Association v. The Washington National Baseball Club et al. Injunction. Com. sols., L. Abraham and A. G. Safford.

11277. Louise F. Sauter v. William W. Sauter. For divorce. Com. sol., Oscar Nauck.

August 1.

11278. Harriett Baldwin v. Samuel M. Baldwin. For divorce. Com. sol., H. B. Moulton.

11279. Francis Mason v. Leopold Luchs et al. Injunction. Com. sol., A. K. Browne.

11280. The Arlington Fire Insurance Co. et al. v. The Metropolitan Club of Washington et al. Injunction. Com. sol., R. R. Perry.

August 3.

11281. Henry D. Boteler v. A. L. Barber et al. Injunction. Com. sol., A. A. Birney.

11282. Elizabeth Latham v. James Latham. For divorce. Com. sol., L. Fugitt.

11283. Charles A. Springman v. Harvey A. Mutthiot. To correct error in conveyance. Com. sol., R. R. Perry.

August 6.

11284. Louis Kurtz, senior, v. Louis Kurtz et al. For partition. Com. sol., W. A. McKenney.

CIRCUIT COURT.—New Suits at Law.

July 28.

28844. The Boston Foundry, of Boston, to the use of the Union Type Foundry, of Chicago, v. The Chesapeake Fire Insurance Co. Policy, $718.64. Pffs atty, William G. Johnson.

July 30.

28845. The District of Columbia v. John Birely. Certiorari to Police Court. Deft attys, Morris & Hamilton.

28846. Maria C. Rudder v. Philip Wallach. Account, $275. Pffs atty, J. H. Ralston.

July 31.

28847. Marrin Eastwood v. Fannie Sheridan. Appeal. Deft attys, Ellis, Johns & McKnight.

28848. Marcus S. Levy et al. v. August Dittrich. Note, $344.02. Pffs attys, Garnett and Mackall.

28849. John M. Finnerty v. E. John Ellis. Note, $595. Pffs atty, William G. Henderson.

28850. Frederica Eckert v. George W. Abell et al. Damages, $10,000. Pffs attys, Gorter and Kelly and Morris & Hamilton.

28851. William H. Dempsey v. Thomas V. Smith et al. Notes, $602.32. Pffs attys, Carusi & Miller.

August 1.

28852. Asbury Coward v. George A. Armes, Md. Judgment, $134.40; $895 costs. Pffs atty, St. J. Fillette.

28853. Mary E. Divver v. Winifred Kelly. Certiorari. Deft atty, C. A. Elliot.

August 2.

28854. Bernard Kilmartin v. Michael Clancy. Judgment of Justice Walter, $90.95. Pffs atty, T. M. Fields.

28855. The McCowan Co., to the use of Edw. G. Ward, receiver, v. John R. Mahoney. Notes, $398.87. Pffs attys, F. W. Jones.

August 3.

28856. Thomas C. Bassbor et al. v. James M. Miller. Note, $226.96. Pffs atty, W. H. Sholes.

28857. Same v. Edw. W. Ayres. Note, $226.96. Pffs atty, Same.

28858. Joseph Gunther v. Peter Fisher. Judgment of Justice Helmick, $85.73.

August 4.

28859. The U. S. of America v. Spencer M. Clarke. Bond, $20,000. Pffs atty, U. S. Attorney.

28860. Adeline Holliday et al. v. Emily F. Dexter et al. Ejectment. Pffs atty, L. Kent.

August 6.

28861. William M. Galt et al. v. The B. and O. R. R. Co. Replevin. Pffs attys, Riddle, Davis & Padgett.

28862. A. A. Griffing Iron Co. v. Bradbury Steam Heating Co. Account, $294.40. Pffs atty, F. W. Jones.

28863. Baldina C. Reesch v. August Schwartz. Account, $305. Pffs atty, Leon Tobriner.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Mary A. Taylor**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1888.

O. B. WILLCOX, Adm'r,
2022 R st. n. w., Washington City.

32 No. 3142 Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrick O'Dea et al. v. Mary O'Dea Brown et al. } In Equity No. 11067. Docket 28.

Thomas M. Fields, Trustee, having reported to this Court that he has sold the real estate described in this proceeding, to wit: lot 46 in Laurence O'Dea et al, subdivision of original lot 4, square 719, to T. C. Murray, for $365, it is, this 31st day of July, 1888, ordered that said sale be, and it is hereby, ratified and confirmed, unless cause to the contrary be shown on or before September 1, 1888.

Provided that a copy of this order be published once a week for the three successive weeks next preceding said date in the WASHINGTON LAW REPORTER.

By the Court. E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **James Keith Edwards**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 3d day of August, 1888.

SARAH M. EDWARDS, Adm'x.
GEORGE B. EDWARDS, Adm'r.
918 Rhode Island av. n. w.

32 Edwards & Barnard, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Lester A. Bartlett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of August, 1888.

CHAS. LYMAN, Adm'r.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rebecca J. Ashby MacAllister**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of August, 1888.

JOHN F. MACALLISTER, 921 F st. n. w.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Guiseppe Mossa**, late of Stockton, New Jersey, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1888.

31 DORSEY CLAGETT, Register of Wills, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Laura V. Cowling et al. v. **Blanche Cowling et al.** } No. 10961. Docket 27.

The Trustees herein, Chapin Brown and Andrew B. Duvall having reported the sale of the real estate in the proceedings mentioned, viz., lot 2 and part of lot 1 in square 252, in City of Washington, D. C., contaning 6020½ sq. feet at $4.10 per sq. feet, amounting to $24,684.05 to Walter C. Johnson, it is, by the Court, this 31st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last mentioned date.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Christina Bremer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of August, 1888.

JOHN A. SPROESSER, Ex'r, 205½ F st. n. w.

32 No. 3160. Ad. D. 14. Simon Wolf, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the case of William W. Roberts, Executor of **Richard Roberts**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 31st day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

32 No. 2672. Ad. D. 13. McPherson & Carlisle, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the matter of the Estate of **Robert Rose**, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased has this day been made by Wm. H. Marbury, of Alexandria, Va.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of August next, at 11 o'clock a. m., to show cause why Letters of Administration d. b. n. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. E. F. BINGHAM, Chief Justice.

Test: DORSEY CLAGETT, Register of Wills.

John Goode and Willis B. Smith, Proctors.

32 No. 6516. Old Series.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth H. Mullikin**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of July, 1888.

BENJAMIN H. STINEMETZ,
JOHN H. OLCOTT,

31 No. 3164. Ad. D. 14 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Louisa Harrison Chew**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

ROBERT S. CHEW, Adm'r, Riggs & Co.

31 Wm. G Johnson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Emma Choiet**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

MARY E. HUSSEY. Adm'x, 1208 H st. n. w.

31 Frank T. Browning, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of July, 1888.

John L. Maffitt v. **Emma H. Maffitt et al.** } No. 11167. Equity Docket 28.

On motion of the plaintiff, by Mr. A. M. McBlair, his solicitor, it is ordered that the defendants, **Mary R. Maffitt, Clarence D. Maffitt and Robert S. Maffitt, Caroline D. Maffitt, Alfred M. Maffitt, Katherine L. Maffitt, John M. Wright, Joshua G. Wright, Mary A. Wright, Thomas H. Wright and Caroline L. Wright**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of lot 19, square 285, in the city of Washington, District of Columbia, the same being No. 1214 K St., N. W.

By the Court. E. F. BINGHAM, Chief Justice, &c.

A true copy. Test: R. J. MEIGS, Clerk, &c.

31 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Freeman Grant Thompson v. **Maud W. Finley et al.** } In Equity. No 11179.

Upon consideration of the report of George E. Emmons, trustee, of the sale of all of lot 12 in square numbered 764, except the west eight feet front by the depth thereof, as particularly described in these proceedings, to John M. Norris, at private sale for the sum of seventy-five hundred dollars cash, it is, this 31st day of July, 1888, by the Court, ordered that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the first day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before the first day of September, 1888.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

31 By W. E. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 23d day of July, 1888.

William H. Crumpton
v. } No. 11209. Eq. Docket 28.
Maggie Crumpton.

On motion of the plaintiff, by Mr. R. White, his solicitor, it is ordered that the defendant, Maggie Crumpton, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bonds of matrimony on the grounds of willful desertion of the plaintiff by the defendant for the uninterrupted period of two years and adultery of the said defendant.

By the Court. E. F. BINGHAM, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of July, 1888.

Clara A. Beale
v. } No. 11191. Eq. Docket 28.
Edward M. Beale.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, Edward M. Beale, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of adultery.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James F. Shea
v. } No. 11185. Equity.
Sallie Shea et al.

The trustees herein, having reported a sale of the south forty (40) feet front, by depth thereof, of lot seven (7), in square two hundred and sixty-three (263), in the City of Washington, in the District of Columbia, for $6,115. It is, this 18th day of July, 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 3d day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sallie S. Gaither, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of July, 1888.

HENRY E. KALUSOWSKI,
ABERT M. READ,
31 No. 3137 Ad D. 14 Executors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 30th, 1888.

In the case of Benjamin F. Rittenhouse, Executor of James J. Kenney, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
31 No. 2869. Ad. D. 13. Gordon & Gordon, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the case of Ada G. Adams, Administratrix of Crawford C. Adams, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 10th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
30 No. 2569. Ad. D. 13. James F. Hood, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 24th, 1888.

In the matter of the Estate of Charles Homiller, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James H. Taylor.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. EDWARD F. BINGHAM, Chief Justice.
30 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Ray
v. } Equity No. 10628.
A. S. Carter et al.

Jackson H. Ralston and David D. Stone, the trustees appointed herein, having reported the sale of the twenty four feet front by the depth of lot nine (9) in square eighty-one (81), lying next north of the south twenty-four feet of said lot, and being in Washington, D. C., to Anderson W. Shields for the sum of $1,300, it is, this 21st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of August, A. D. 1888.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER before said 21st day of August, A. D. 1888.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 23, 1888.

In the matter of the Estate of Almira W. Powell, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by George W. Brown, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. E. F. BINGHAM, Chief Justice.
Test: DORSEY CLAGETT, Register of Wills.
30 No. 3159. Ad. D. 14. Henry Wise Garnett, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Alexander Y. P. Garnett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1888.

HENRY WISE GARNETT, Ex'r.

30 No. 3156. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Benjamin H. Keller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1888.

CATHARINE ANN KELLER, Ex'x, 1218 28th st. n. w.

30 No. 3144. Ad. D. 14. S. A. Cox, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Joseph B. Cecil**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1888.

EDWIN H. HARNER, Adm'r, 1018 25th st. n. w.

30 No. 3157. Ad. D. 14. Wm. T. Bailey, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel McMahon**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

MARY McMAHON, Adm'x, Anacostia P. O., D. C.

30 No. 3136. Ad. D. 14. J. C. De Putron, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Peter McIntyre**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of July, 1888.

× SISTER BEATRICE DUFFY, Adm'x,
Providence Hospital.

30 No. 3135. Ad. D. 14. C. C. Lancaster, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Ida Forrest et al.
v. } No. 11065. In Equity.
Abraham F. Kendick et al.

It is, this 25th day of July, A. D. 1888, ordered that the sale reported by the trustee in the above entitled cause in his report filed herein, be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned day.

By the Court. E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
30 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the case of **Sarah J. Kennedy**, Administratrix c. t. a. of **Joseph C. G. Kennedy**, deceased, the Administratrix c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 17th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 2791. Ad. D. 13. Carusi & Miller, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the matter of the Estate of **Benigne Pargny Becker**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the estate of the said deceased has this day been made by Victor Becker.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and in the *Evening Star* previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: DORSEY CLAGETT, Register of Wills.
30 No. 3162. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the matter of the Estate of **James C. Reed**, late of U. S. Army, stationed at Washington, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased, not already administered, has this day been made by Patrick H. Lynch, of Bristoe, Prince William Co., Va.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 10 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased, not already administered, should should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.
30 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 20th, 1888.

In the matter of the last Will of **Eliza A. Offutt**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Richard P. Jackson, named as Executor.

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of August, 1888, next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.
Test: DORSEY CLAGETT, Register of Wills.
30 J. J. Waters, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
6th day of July, 1888.

Gussie Lavinia Cox
v.
Eugene R. Cox. } 11189. Equity Docket 28.

On motion of the complainant, by Charles S. Wilson, her attorney, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this bill is a divorce *a vinculo*. Notice to be published in the WASHINGTON LAW REPORTER and the *Critic*.

By the Court. W. S. COX, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(Filed July 17, 1888.)

Daniel Loughran
v.
Mary Cunningham et al. } Eq. No. 11200.

It is ordered this 17th day of July, A. D. 1888, that the sale of the real estate described in these proceedings to Margaret A. Fegan and reported by the trustee, be and it is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

In Re Estate of Albert B. Baker, deceased.

Upon consideration of the above petition, it is, by the Court this 20th day of July, A. D. 1888, *ordered* that notice of the above application, in the usual form, to the next of kin of the decedent to show cause, if any, why the same should not be granted, be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before Friday, the 17th day of August, A. D. 1888, to which day at 11 o'clock a. m., the case is hereby continued.

A. B. HAGNER.
A true copy. Test: DORSEY CLAGETT,
Register of Wills.
30 Fred. W. Jones, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
(Filed July 17, 1888.)

Milton H. Gettinger
v.
William Gettinger et al. } 11211. Eq. Docket 28.

Ordered this 17th day of July, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee of the real estate described in the said report, filed the 17th day of July instant, be ratified and confirmed, unless cause to the contrary be shown on or before the 17th day of August, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,575.00.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
29 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 14th day of July, 1888.

Charles H. Wood
v.
Ella J. Wood. } No. 11220. Eq. Docket 28.

On motion of the plaintiff, by Mr. W. T. Johnson, his solicitor, it is ordered that the defendant cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
29 By L. P. WILLIAMS, Ass't Clerk.

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THE LAW REPORTER CO. begs to announce to the profession that the following of its series of legal forms are now complete and can be obtained at the office of the Company, 503 E Street:

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5	Trustee's Deed,	5	50	3.50
6	Court Trustee's Deed,	5	50	3.50
10	Receipt,	1	6	40
11	Rent Receipt,	1	6	40
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13	Deed of Trust Note,	1	6	40
14	Declaration: Common Counts,	3	25	1.75
15	" General,	5	50	3.50
16	Stock Transfer,	2	10	75
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18	Acknowledgment: Single, *Clerk's Certificate*,	3	25	1.75
19	Acknowledgment: With Wife,	3	25	1.75
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These Forms are examined and passed on by a committee of leading members of the Bar, are handsomely printed on Crane Bros. Linen Paper, with red marginal lines, are of uniform legal sizes, and on the whole constitute the finest set of legal forms ever issued in the District. Many other forms are in course of production, it being the intention of the Company to publish a complete set of law blanks.

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DUMONT, N., 629 F St. n. w.

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Our Judges and Their Labors.

Our judges, as a rule, are careful, painstaking and hard-worked men. The general idea that when they leave the bench their labors are at an end is a mistaken one. The layman thinks that the life of a judicial officer is a path of roses, and that the most difficult task a judge has to perform is to visit the official paymaster for his monthly salary and receipt for the same.

The lawyer knows that the judge's work frequently commences when he leaves the bench for the supposed retirement of his home. Here it is that he is obliged to examine and consider the numerous questions of both law and fact which have been presented for his judicial determination, and that which it has taken lawyers weeks, perhaps months, to ascertain and reflect upon, must be expeditiously examined and passed upon. Then, too, he must keep himself informed of the current decisions of the courts not only in his own city, but also those rendered in the various sections of the state and country, so that conflicting decisions will not result.

It occasionally happens that courts reverse or modify their former rulings. This is the result of maturer reflection of the question involved, aided, possibly, by a more careful argument of counsel in the later case.

It has recently occurred in Pennsylvania that the court of last resort was obliged to change its ruling of over half a century upon a particular point of law; and in this city there was reported within a few days a decision of the Supreme Court indited by an able and distinguished judge, which aroused much thought among the lawyers, and which, if it had been permitted to stand, would have resulted in the unsettlement of many titles to real property. The conclusion of the learned court was clearly correct, but a dictum in the opinion upon a point not necessarily involved in the case set the lawyers to a good deal of thinking, and gave many of them a few sleepless nights. It induced the court to think the matter over, and, as becomes an upright and learned judge, the author of the opinion, upon maturer reflection, modified his views and left the law on the particular subject exactly what doubtless the majority of lawyers who had investigated the subject thought it to be.

It is not an uncommon expression of an inexperienced layman that a judge has never carefully considered a case, otherwise his decision would have been the reverse of what it was. Naturally a defeated litigant thus feels, for he believes his side to have been in the right. But a judge carefully recapitulates, selects and collates the material facts, weighs them carefully under the rules of law, and then decides.

A lamented member of the court of last resort of this State once said that a defeated litigant had two remedies, either to appeal from an adverse decision or repair to the nearest tavern and vilify the judge. Quite frequently both methods are adopted.

Greater faith in our judiciary would in a great many cases dispense with useless and costly appeals, and save the litigant the worry attending the latter expedient.

An examination of the records on appeal will show a large mass of useless matter in appeal books, only tending to incumber the record and increase the work of the judges without any useful result being attained. It frequently happens that a case involving but a single point, and which ought to be presented within the limits of a few pages, requires the perusal of one hundred pages of closely printed matter.

All this can and ought to be obviated. Sooner or later it will become absolutely essential to grant relief to the judiciary. Either the right of appeal, which is not absolute but statutory only, must be restricted, or else supplemental legislation, if necessary, must be had to the effect that papers on appeal shall contain merely an abstract of the pleadings and testimony or motion papers sufficient to disclose the necessary information for an intelligent examination of the matter in dispute.—*The Law Journal.*

SUPREME COURT OF PENNSYLVANIA.

WILLEY v. CITY OF ALLEGHENY.

1. To undertake a duty for which one is incompetent, or is not adequately provided, is in itself negligence.
2. The nature and extent of the peril to be guarded against, and the extent of the calamity to be suffered in case of failure, are always to be considered in determining the degree of care to be exercised in any given case.
3. Whoever may be the owner of a public wharf, whether a private person, a corporation, or a municipality, the duties of the owner and the rights of the public are the same.
4. It is the duty of the owner of a wharf to make suitable preparations for the safety of those who moor their rafts and boats along its side, and to provide such appliances for holding them against the current and wind as are sufficient for the purpose. To furnish protection against ordinary perils, or to use ordinary care, or reasonable care under ordinary circumstances, is not enough.
5. The care that is required consists in the use of all the appliances and precautions that a diligent man owning the rafts and owning the wharf would deem it proper to employ in the preservation of his own property from the perils of the river.

Decided January 16, 1888.

Appeal from the decree of the Court of Common Pleas No. 1 of Allegheny.

Opinion by WILLIAMS, J.—The important question in this case is that raised by the third, fourth, fifth and six assignments of error. The action was based upon the allegation that the city had failed to provide its wharf with fastenings sufficient in number and strength to secure boats and rafts from being swept away by floods. The second point submitted by the plaintiff to the court below asked an instruction to the jury that, inasmuch as the City of Allegheny was in "possession of the wharf at which plaintiff's rafts were lost, and receiving tolls or wharfage

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for its use, it was held to the utmost care of said wharf, and it was a violation of defendant's duty to permit said wharf to get out of repair, or neglect to provide means of fastening for the mooring of rafts and other craft at said wharf; and if the jury believe from the evidence that plaintiff's loss on or about June 9, 1881, was occasioned in consequence of said neglect of duty on part of the defendant city, then their verdict should be for the plaintiff." The court affirmed this point, adding this important qualification, "that 'utmost care' must be understood to mean only reasonable and proper care in view of the safe mooring of boats and rafts under ordinary circumstances, and floods which could and should have been anticipated by the exercise of reasonable care and foresight." This answer, taken as a whole, affirms the proposition that the city was bound to the exercise of the utmost care, and then defines the word utmost as meaning reasonable, and the measure of care required as "only reasonable and proper care * * * under ordinary circumstances." It left the jury without any clear and adequate declaration of the rule they were expected to apply. It becomes necessary, therefore, to examine briefly into the relation of the parties to each other, and the duty resting on the city as the owner of the wharf. Whoever may be the the owner of a public wharf, whether a private person, a corporation, or a municipality, the duties of the owner and rights of the public are the same. The owner has the exclusive control over the property and its management. The public are invited to use it upon the payment of the established rates of toll or wharfage, and must trust to the security and sufficiency of the appliances offered them. The wharf of the defendant is upon the bank of the Allegheny River, which is subject to great changes in the volume of its waters and the force of the current by reason of floods. The navigation is almost entirely descending, and is by rafts and heavily loaded boats that come down the river upon the high water. The advantages and the perils of floods enter into the calculations of both the navigator of the stream and the owner of the wharf upon its banks. The craft comes to the market which the City of Allegheny affords, upon the floods, and must depend upon the wharf for security against the swollen current while seeking a purchaser. It is the duty of the owner of the wharf to make suitable preparations for the safety of those who moor their rafts and boats along its side. To undertake a duty for which one is incompetent, or is not adequately provided, is in itself negligence. When the public are invited to the wharf of the defendant, and charged for the security offered them, they have a right to expect, and to depend upon, the provision by the city of such appliances for securing and holding their boats and rafts against the current as are sufficient for that purpose. The wharfinger who receives and stores the goods of his customers in his warehouse is liable only for ordinary care, for the goods in store are exposed only to the ordinary perils of storage on the land; but rafts and boats moored at the defendant's wharf are exposed to the dangers of the stream. The violence of the winds and the floods are among these dangers. The raftman and the boatman seek security against these at the wharf. The perils are not ordinary, but they are great, and ordinary care or "reasonable care under ordinary circumstances," is not enough; it is not proportioned to the dangers of the navigation, or to the extent of the calamity in case of failure in the undertaking to hold securely.

In the case of the City of Pittsburgh v. Grier, 22 Penna. St., 54, a similar question was raised, and this court said: "The interests of commerce imperatively required that the place to which vessels are invited to come should be in a safe condition;" but no more exact definition of the measure of care required was attempted.

In the recent case of the City of Allegheny v. Campbell & Son, 107 Penna. St., 530, the court below affirmed a point asking an instruction to the jury that "the city was bound to the utmost care" in maintaining its wharf in a safe condition for public use. This instruction was assigned for error as a too rigorous statement of the rule, but it was affirmed by this court. Judge Paxson said, in delivering the opinion of the court: "The plaintiffs certainly have a right to look to the city for redress, for it was upon the city the duty was devolved of keeping the wharf in a safe condition;" but the expression "utmost care" was not commented on.

In the case of the Mersey Docks and Harbor Trustees v. Gibbs, decided in the House of Lords in 1865, the plaintiff's ship was injured on a bank of mud at the mouth of the docks. The trustees denied their liability, as the obstruction was not known to them, and asserted that they were liable only for the failure to exercise ordinary care. But it was held, the company was liable for the injury caused by the accumulation of mud at the docks, whether they knew of the accumulation or not, if, by their servants, they had the means of knowing, and were negligently ignorant of it. An analogous principal is asserted in the cases in which the duty of a ship or dock company to provide safe access to their ships for passengers has come under examination; and such companies have been held to very strict liability for any defect or insufficiency in the appliances used for this purpose: Wh. on Neg., par. 823; John v. Bacon, L. R., 5 C. P., 437; Wendell v. Baxter, 12 Gray, 494.

The docks and gangways are held to be highways, so far as to give to the public an unobstructed use of them as a means of access to the ship; but as the danger attending their use is much greater than that attending the use of the public highways, so the measure of care required is correspondingly greater. In the case of railroad companies the rule has been held with great steadiness that the duty of the company is to exercise the utmost degree of care consistent with the continuance of the business.

In our own leading case upon the subject (Laing v. Golder, 8 Barr, 479) Justice Bell, who delivered the opinion of the court, uses this language: "But though in legal contemplation they (the railroad companies) do not warrant the absolute safety of passengers, they are yet bound to the utmost care. The slightest neglect against which human prudence and foresight may guard, and by which hurt or loss is occasion will render them liable to answer in damages."

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The foundation on which the rule in all these cases rests is the character of the danger to which the property or person is exposed, and the absolute dependence of the public upon the care and fidelity of those who serve it.

The same words, "utmost care," have been used to define the degree of care due from the owner of a public wharf to the navigator of boats and rafts; from a ship company to the public passing over its gangways; from a railroad company to passengers being transported in its cars. In each case, however, they are to be understood in connection with the subject to which they are applied.

In the case of the Railroad Co. v. Fries, 87 Penna. St., 234, negligence is defined as the absence of care according to the circumstances. Drawn out at length this is a statement that the nature and extent of the peril to be guarded against and the extent of the calamity to be suffered in case of failure, are always to be considered in determining the degree of care to be exercised in any given case. Whatever a diligent man would deem necessary under any given circumstances, for the preservation of his own property, must be done by the individual or corporation or city, that undertakes, for hire, the preservation of property for the public. The "utmost care," therefore, which was due from the City of Allegheny, required the use of all the appliances and precautions that a diligent man owning the rafts and owning the wharf would deem it proper to employ in the preservation of his own property from the perils of the river. This definition or statement of the care due from the defendant city is in harmony with the case cited above, and is that by which the question of its negligence in the management of its wharf is to be determined.

Judgment reversed and *venire facias de novo* awarded.

MARYLAND COURT OF APPEALS.

BENESCH v. WEIL.

Opinion filed June 13, 1898.

The difference between the allegation of *detinet* and that of *detinuit* in actions of replevin, when the goods have been eloigned, stated:

A purchase was made by a person knowing himself to be insolvent, and who had the fraudulent design of never paying for them, and who did not disclose his condition to the vendor. Upon these facts the vendor may treat the whole transaction as void, and replevy the goods; and equally so against the assignee of the vendee for the benefit of creditors.

The defendant having, by a tortious act, deprived the plaintiff of the means of proving that certain goods came into the former's possession, the burden of proving the possession is shifted from the plaintiff to the defendant.

Appeal from the Superior Court of Baltimore City.

ALVEY, C. J.—The plaintiff brought an action of replevin against the defendant, the present appellee, for thirty-five suits of men's clothing, alleged to be worth $350, which, as contended by the plaintiff, were obtained from him by fraud, under color of purchase. The goods were not taken by the sheriff and delivered to the plaintiff, according to the command of the writ, and the writ was returned "eloigned." Thereupon the plaintiff amended his declaration, and changed its form of allegation from the *detinuit* to the *detinet*. The difference resulting from the form of the allegation is this: that where the declaration is in the *detinuit*, the plaintiff, if he recovers, has adjudged to him the right of possession of the goods and chattels, and damages for their detention only. But where the goods and chattels have been eloigned, or otherwise withheld from the execution of the writ, by the act of defendant, and the declaration is in the *detinet*, the plaintiff, if he be entitled to recover, is entitled to have awarded him, as well the value of the goods, as damages for their detention. 6 Com. Dig. tit. Pleader, 3. K. 10; 8 Bac. Abr. tit. Replevin, H. pp. 555, 556; 2 Tidd's Prac., 887; Dorsey v. Gassaway, 2 H. & J., 402, 413. The act of replevin in this latter form, in respect to the amount of the recovery, is not materially different from an action of trover.

The declaration having been amended in the particular stated, the case was tried upon the pleas of *non cepit*, property in the defendant, and property in the defendant as trustee. To the two last pleas replications were made, asserting property in the plaintiff. The issues thus made imposed upon the plaintiff the burden of proof to establish his right of property in the goods sued for, and that they were wrongfully detained by the defendant. Callum v. Bevans, 6 H. & J., 469, 471.

It appears that the plaintiff, being a dealer in men's clothing, sold, on August 28, 1887, to Herman Straus, a keeper of a retail clothing store, a bill of clothing amounting to $839 on a credit of thirty days; but only part of the whole quantity contracted for was delivered.

On the 2d of September, 1887, there were sixteen suits delivered; on the 7th of the same month there were eighteen suits delivered, and on the 12th of that month there was one suit delivered; the whole quantity of suits delivered being divided into lots, and numbered according to the grade or price. And on the 15th of September, 1887, Straus made a general assignment, to the defendant, for the benefit of creditors. Whereupon the defendant closed the store and kept it locked, and though the plaintiff and sheriff, with the writ of replevin, applied to the defendant for admission to the store, that the plaintiff might identify his goods, so that they could be replevied and delivered, according to the command of the writ, all admission was refused; and the store was kept locked against the plaintiff and the sheriff until after the return day of the writ. Soon thereafter the entire stock of goods was sold in bulk for $1,700, though the stock had been previously appraised at about $2,500. At the trial, the defendant proved, by Straus and his clerk, that the goods obtained from the plaintiff had all been sold, except three or four suits of clothes that remained in store at the time it was closed by the defendant.

The writ of replevin was sued out the day after the general assignment was made to the defendant; and, in resorting to that process, the plaintiff proceeded upon the contention that the goods had been obtained from him by Straus, with the fraudulent design of never paying for

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them; that Straus knew himself to be insolvent at the time, but never disclosed the fact to the plaintiff, and that he never intended or expected to pay for the goods. And, upon such state of case, if established, there could be no question of the right of the vendor to treat the whole transaction as void, as against the fraudulent vendee, and equally so as against the general assignee of the vendee for the benefit of creditors; and as such assignee stands in no better position than the assignor himself in respect to the goods so fraudulently obtained an action of replevin for the goods may be maintained against such assignee. Ratcliffe v. Sangston, 18 Md., 388; Powell v. Bradlee, 9 G. & J., 220; Farley v. Lincoln, 51 N. H., 577.

Upon the whole evidence, the plaintiff asked the court to instruct the jury that if they should find that the goods sued for had been sold and delivered to Straus by the plaintiff, and that Straus knew at the time that he was insolvent, and had no reasonable expectation of paying for the goods, and that afterwards the goods came to the hands of the defendant, and were in his possession when the writ of replevin was issued, and that he locked up the goods and would not permit the sheriff to take them under the writ, then the verdict should be for the plaintiff, and the measure of the damages proper to be awarded to the plaintiff was the value of the goods. This prayer for instruction was refused by the court. But the court instructed the jury at the request of the defendant, that they could only find a verdict for the plaintiff for the value of such of the goods sold by the plaintiff to Straus as they should find from the evidence came into the possession of the defendant, and the burden of proof was on the plaintiff to show what portion of the goods did so come into the possession of the defendant and the value thereof; and that there was no evidence from which the jury could find that any of said goods did so come into the possession of the defendant, except the three or four suits of clothes mentioned in the evidence by some of the witnesses.

Under the instructions given the jury found a verdict for the plaintiff for the value of the four suits of clothes, and thus, by their finding, established the fact of the fraud on the part of Straus in obtaining the goods from the plaintiff, and that the defendant was a wrongdoer at least to the extent of withholding the four suits of clothes.

In refusing to grant the prayer on the part of the plaintiff, and in granting that on the part of the defendant, we think there was error. It is clearly inferable that the ground upon which the plaintiff's prayer was rejected, was the supposed want of evidence to support it. But we think there was evidence that the jury should have been allowed to consider in support of that prayer. It is not questioned that the goods sued for were delivered to Straus at his store, and at the times mentioned in the evidence. and then the short time that intervened from the delivery of the goods to the time of making the assignment to the defendant, and the locking up of the store, and the exclusion of the sheriff with process, and also the plaintiff, to prevent the identification and the taking of the goods under the suit, notwithstanding the plaintiff had given a replevin bond to indemnify the defendant, were circumstances upon which a presumption of fact might well be founded. In addition to this, it appears that there was a sales book which would have shown, if produced, the daily sales from the stock of goods in the store. But instead of producing that book, the defendant placed upon the stand as a witness, Straus (the party charged with the fraud in obtaining the goods), to state in a conjectural way his estimate of the daily sales from the store, which he placed at from $25 to $250, though he furnished no dates when such sales were made. Why was not the sales book produced and allowed to speak upon that question rather than rely upon the vague and indefinite testimony of Straus? The defendant was in the position of a wrongdoer alleged to be holding the plaintiff's goods wrongfully; and all the uncertainty that exists in regard to the identity of the goods disposed to be in the possession of the defendant, has been produced by the conduct of the defendant himself; and the question is, can he be allowed to take advantage of that contract, and thus defeat the possible rights of the plaintiff? Clearly not. It being an undisputed fact that the goods went into the store of Straus recently before the assignment to the defendant, and under that assignment the defendant became possessed of all the books and data to show how the goods had been disposed of, if disposed at all, and the evidence showing, moreover, that there had been an inventory taken of the goods in the store after the assignment, but which inventory was not produced; in view of such facts, it would seem to be but reasonable and fair that the onus of proof should be shifted from the plaintiff to the defendant, and that it should rest with the latter to show that the goods never came to his posssession; and that is strictly according to principle. Of such onus he could have relieved himself by allowing, as he ought to have done, the plaintiff an opportunity, which was sought, to indentify his goods, and the process of the law to have its course instead of obstructing it; but having refused that reasonable request, and opposed himself to the execution of the writ of replevin, the defendant assumed the burthen of showing affirmatively that the plaintiff's goods had not come into his possession. And as against the proof produced by the defendant the plaintiff had the right to insist before the jury upon all the presumptions that the circumstances of the case gave rise to, for he was in no way bound to concede the truth of the witnesses on the part of the defendant.

This case cannot, in principle and reason, be distinguished from that of Preston & Hepburn v. Leighton, 6 Md., 88. In that case a mortgage was executed of all the goods and fixtures then in a certain store and covering also the subsequently acquired goods. After this mortgage, and after some of the goods had been sold by the morgagors and others purchased, certain parties, claiming under a subsequent deed, tortiously took possession of all the property and sold it. In the trial of the case (an action for money had and received) the defendants made the proposition to the court, by the first prayer presented by them that "to enable the plaintiff to recover for a specific amount, it was necessary he should satisfy the jury by evidence of

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the proportion of money received by defendants as the proceeds of the goods remaining in the store at the execution of the mortgage, as distinguished from those afterwards brought therein." That proposition was rejected by the court below, and that ruling was affirmed by this court; this court holding that the onus was upon the parties wrongfully taking the goods to show what proportion of the property which was in the store at the date of the mortgage came into their hands, as every presumption is made against a wrongdoer. In discussing the question raised by the first prayer of the defendants in that case, the court said: "If they (the defendants) have, by a tortious act, deprived the plaintiff of the means of proving his case as fully as they insist he should have done, or if, having possessed themselves of the books and accounts they will not produce them for the purpose of explaining or rebutting the case as presented on the part of the plaintiff, they cannot complain of the consequences.

"Every presumption is made against a wrongdoer. The case of Armory v. Delamirie, 1 Str., 504, was decided upon the ground that the defendant had suppressed the means of ascertaining the truth by withholding the jewel for the value of which the suit was brought. It would be unreasonable, under the circumstances in which the plaintiff was placed by the act of the defendant, to cast this burden upon him." And so here it is equally unreasonable that the plaintiff should be thwarted in his legal efforts to maintain his rights by the act of the defendant in withholding the means by which the extent and certainty of the right would be made to appear, and but for such act of the defendant all uncertainty in the proof would be removed. In such case presumption, if there be a reasonable foundation for it, will perform the office of direct proof, and it is the proper function of the jury to consider and pass upon all the presumptions of fact that arise in the case. Crane v. Morris & Astor, 6 Pet., 598.

Being of opinion that there was evidence for the consideration of the jury in support of the plaintiff's prayer, that prayer being in form and principle correct when construed in reference to the facts of the case, we think it ought to have been granted. And with respect to the defendants' third prayer, it follows from what we have said that such prayer ought to have been rejected. The judgment, therefore, must be reversed, and the case be remanded for a new trial.

Judgment reversed and cause remanded.

CIRCUMSTANCES stated under which the defendant, having charge of a building, caused a hole to be uncovered in a passway, into which hole plaintiff, while in the discharge of his duty, fell and was injured: *Held*, that defendant was liable in damages therefor. Toomey v. Sanborn, S. J. C. Mass., Jan. 7, 1888; 5. N. Eng. Rep., 549.

A NOTE payable "on demand, after date," is not a time note. The Statute of Limitations will run against it from its date.—Fenno v. Gay, S. J. C. Mass., Jan. 16, 1888; 5 N. Eng., Rep., 568.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

WILLIAM W. AVERELL
v.
SECOND NATIONAL BANK OF WASHINGTON CITY.

The CHIEF JUSTICE and Justices COX and JAMES sitting.

Decided April 30, 1888.

Plaintiff being, on the 16th of May, the holder of a $1,000 check, post-dated the 18th, took it after banking hours to the bank upon which it was drawn. The bank had closed its doors; but he being admitted to one of the back rooms thereof, found there the paying teller and left the check with him, who promised to see to its collection and to carry the amount to plaintiff's credit on the books of the bank. Sunday being the 18th the check was not payable until the 19th, and although on that day the bank had sufficient money to the credit of the drawer to have paid the check, yet, by some oversight, it was all paid out on other checks of the drawer presented at various times during the day, including the payment of $1,590, on two drafts held by the bank itself, so that (there being nothing left to pay the plaintiff's check) it was protested at the request of the bank as holder thereof. *Held*, that the bank having ratified the action of the paying teller in thus receiving the check for collection became responsible for the performance of that duty and could not apply any of the money of the drawer of the check to the payment of its drafts until the plaintiff's check was first paid.

Motion by plaintiff for a new trial on a bill of exceptions. Granted.

Action for money had and received. At the trial the court directed a verdict for the defendant.

The facts are sufficiently stated in the opinion.

EDWARD A. NEWMAN for plaintiff:

There can be no doubt that, under the circumstances of this case, the law transferred the amount of plaintiff's check from the account of the drawer to the credit of the plaintiff, and fixed the bank's liability to account therefor to the plaintiff.

Kilsby v. Williams, 5 Barn. & Ald., 815; Morse, Banking, p. 321; Oddie v. Nat. City Bank, 45 N. Y., 735: Nat. Gold Bank & Trust Co. v. McDonald, 51 Cal., 64; City Nat. Bank v. Burns, 68 Ala., 275; First Nat. Bank v. Burkhardt, 100 U. S., 686.

In the case of a deposit of a check drawn upon itself the bank becomes at once the debtor of the depositor, and the title to the deposit passes to the bank.

Oddie v. Nat. City Bank, 45 N. Y., 735; Tinkham v. Heyworth, 31 Ill., 519; Bank of New Hanover v. Kenan, 76 N. C., 345.

The public dealing with a bank is not bound to inquire into the special instructions given to its officers or servants as to the manner in which their duties are to be performed, and the bank will be bound by their acts, and must be held responsible for the conduct of their officers within the scope of their apparent authority.

Munn v. Burch, 25 Ill., 35; East River Nat. Bank v. Gove., 57 N. Y., 597; Hotchkiss v. Artisans Bank, 42 Barb., 517; Jackson Ins. Co. v. Cross, 9 Heisk. (Tenn.), 283.

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Banks are responsible for the acts of their agents, even when the agents exceed their authority.

Farmers & M. Bank v. Butchers & D. Bank, 16 N. Y., 125; Lloyd v. West Branch Bank, 15 Pa., 172; Minor v. Mechanics Bank, 26 U. S. 1 Pet., 69; Merchants Bank v. State Bank, 77 U. S., 10 Wall., 644, 646, 650.

The question as to whether there had or had not been a deposit of the check was a fact to be found by the jury in this case; and the Court erred in taking that question and other questions of fact from the consideration of the jury.

First Nat. Bank v. Burkhardt, 100 U. S., 686.

WILLIAM F. MATTINGLY for defendant:

There is no privity of contract between the holder of a check and the bank on which it is drawn. The bank owes no duty and is under no obligation to the holder; and he cannot sue the bank for refusing payment in the absence of proof that the check was accepted by the bank or charged against the drawer.

Bank of the Republic v. Millard, 77 U. S., 10 Wall., 152; First Nat. Bank v. Whitman, 94 U. S., 343.

There is no evidence of an acceptance of the check by the bank. Under the circumstances the paying teller was the agent of the plaintiff and not of the bank.

Morrow v. James, 3 Mackey, 27; S. C. 4 Mackey, 59. See also First Nat. Bank v. Whitman, *supra*.

Mr. Justice JAMES delivered the opinion of the court.

This is an action for money had and received to the use of the plaintiff, based on the following case:

On the 16th of May, 1884, the plaintiff went to the bank at about half past three and, although the bank had closed for the day, was admitted to a back room where he found the paying teller, Mr. Drinkard. Explaining that he was obliged to go to New York that evening and would need the money, he handed to the paying teller two checks drawn on the bank by one George H. Levis, one of them dated on that day, the other on the 18th of May, and each for $1,000. The paying teller brought from his desk in the banking room the money for the check dated on the 16th, and then called the plaintiff's attention to the fact that the other check was post-dated. The plaintiff explained that he should not be in the city on the 18th; and the paying teller thereupon kept the post-dated check, saying that he would carry it to the plaintiff's credit on the 19th, the 18th being Sunday, and that the plaintiff could check against it. He then requested the plaintiff to write his name in what was called the *Signature Book*, which was done.

The plaintiff offered evidence tending to show that at the opening of the bank on the 19th the paying teller still had the check of the 18th in his possession; that at that time there was a deposit to the credit of Levis, unappropriated and subject to the payment of the check, amounting to $5,083; that on that day the Bank paid out, on other checks of the same drawer, to different persons various sums amounting to $5,420, some of these checks being dated of that day; that among the payments so made were $1,590 on two New York drafts payable to the bank which had been cashed by the bank and had not been paid in New York; that is to say that the bank had paid that sum to itself out of the deposit. The check left with the paying teller by the plaintiff was returned to him on the 23d of May duly protested, the notary's certificate stating that it had been presented at the bank for payment *at the request of the bank*.

No evidence was offered on the part of the defendant, and the Court instructed the jury to find for the defendant.

It was urged at the argument in this Court, on the part of the defendant, that the paying teller was not authorized by his office to receive and give credit for the check; that he therefore acted, in whatever was done, as agent for the plaintiff, and that if he did not seasonably present the check so as to get it cashed by the bank, it was the plaintiff's misfortune in employing a careless agent.

The notary's certificate is evidence of the facts stated in it; and it thereby appears that the check was protested at the request of the Bank. It follows that the bank treated the check as being in its possession for the collection and thus recognized and ratified the paying teller's act of receiving it. For all the purposes of the transaction it adopted him as a receiving teller, and the check must be held to have been originally received by the bank for collection. The bank was bound, therefore, by the paying teller undertaking to place the check to plaintiff's credit.

We think this case clearly comes within the principle of Kilsby v. Williams, 5 Barn. & Ald., 815, where it was held that the defendant, a banker, having received a check and charged himself with the duty of applying to it any money of the drawer which should come in, was bound to give preference to that check over its own claim for a balance due from the drawer.

Judgment is reversed, and the case is remanded for a new trial.

NEW YORK SUPREME COURT.

GENERAL TERM.

THE BROADWAY AND SEVENTH AVENUE RAILROAD CO., *Respondent*, AGAINST THE MAYOR, &C., *Appellant*.

Appeal from order granting injunction *pendente lite*.

A street railroad company has no right to control or use or in any manner interfere with any part of the public street, except that actually included within its roadway, and though required to run its cars as often as the convenience of passengers may require, it may not use the street in such a manner as that the rights of abutting owners shall be ignored and so as to obstruct and impede or prevent the use of other parts of the street in keeping open its tracks for the purposes of passage.

The defendants, upon whom the duty is imposed to remove obstructions from the streets and to keep the streets in a condition for travel, have the right by ordinance to prohibit or to regulate the use by the street railroads of snow ploughs, which pile up the snow upon both sides of the tracks, encumbering the balance of the street and depriving the abutting owners of access and egress, and the general public of the use of the street alongside the roadways.

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VAN BRUNT, P. J.—This action was brought by the plaintiff to enjoin the defendant from enforcing an ordinance which had been duly passed by the Common Council regulating the use of snow ploughs in the public streets upon the plaintiff's railroad, and to restrain the defendant from doing any act to interfere with, hinder, delay or obstruct the plaintiff in the removal of snow from its railroad tracks, and a preliminary injunction having been granted therein, an order was made continuing the injunction enjoining the defendant from enforcing the ordinance aforesaid.

The ground upon which the plaintiff seems to claim the unrestricted right to the use of a snow plough in clearing the snow from its railroad track appears to be founded upon a claim of right to use the public streets for the conduct of its business in any manner which may be considered by it to be most suitable and most economical. The rights of the plaintiff to maintain a street railroad in any of the streets of New York depend upon the charter granted to it by the Legislature by chap. 513 of the laws of 1860. The relevant parts of this charter to which it is necessary to call attention are as follows: By section 1 the assignors of the company are authorized "to lay, construct, operate and use a railroad with a double or single track, as hereinafter provided, and to convey passengers thereon for compensation through, upon and along the following streets and avenues, route or routes in the City of New York, &c., * * * together with the necessary connections, turnouts and switches for the proper working and accomodation of the said railroad on the said route or routes."

By section 2 it is provided that "said railroad shall be constructed on the most approved plan of the construction of city railroads and shall be run as often as the convenience of passengers may require, and shall be subject to such reasonable rules and regulations in respect thereto as the Common Council of the City of New York may, from time to time, by ordinance prescribe."

By section 4, the Mayor, Common Council and the several officers of the city are prohibited from permitting any railroad company, claiming authority under the General Railroad Act, to construct any railroad in or upon any or either of the said streets or avenues, "and from doing any other act to hinder, delay or obstruct the construction or operation of said railroad as herein authorized. And it is hereby made the duty of the said Mayor, Common Council and other officers to do such acts within their respective departments as may be needful to promote the construction and protect the operation of said railroad as provided in this law. Any act or thing done in violation hereof shall be inoperative and void."

In construing the rights of the plaintiff in this action the Court of Appeals, in the decision of the case of The People v. Kerr (27 N. Y., 188), seems to have intimated, as far as it was necessary for the disposition of that case, that the City of New York was the absolute owner in fee of the soil of the streets which had been opened therein, and that the abutting owners upon such streets had no rights which the Legislature was bound to respect, and that the Legislature had the power to grant the absolute use of the whole or any part of a public street for the benefit of a private corporation engaged in the business of the transportation of passengers.

This absolute denial of the rights of abutting owners and assertion of absolute ownership upon the part of the city in the soil of these streets has been completely overturned by the recent decisions relating to the subject, and the rights of abutting owners to the free use and enjoyment of that which they have bought and paid for is now recognized, as is also the fact that the city, by the exercise of the right of eminent domain, has not taken an absolute fee in the streets, but only a qualified fee of a character sufficient to enable it to carry out the public uses for the advancement of which the soil in the street had been condemned.

By these recent decisions the obligations of the contract entered into between The People and the abutting owner who has been assessed for the benefit arising from the opening of the new street, and who has paid therefor, are recognized; and the further principal is that by the exercise of the right of eminent domain, no further property right can be acquired than is necessary for the enjoyment of the public use to which the property condemned is to be devoted.

By the charter of the City of New York it is declared that the Common Council shall have the power to make such ordinances not inconsistent with law and the Constitution of this State and with such penalties in the matters and for the purposes following in addition to the other powers elsewhere specially granted, amongst others are specified the power to regulate the use of the streets, highways, railroads and public places by foot passengers, animals, vehicles, cars and locomotives, and to prevent encoachments upon and obstruction to the streets, highways, railroads and public places, and to regulate the cleaning of the streets, avenues, sidewalks and gutters, and to remove ice and snow from them.

Among the duties which have been imposed upon the corporation of the City of New York by its organic law is that of keeping its streets free and suitable for the passage of the public over each and every part thereof.

The question, therefore, is presented upon the claim made by the plaintiff in this action as to whether the railroad company, in the exercise of the power conferred upon it, may use the street in such a manner as that the rights of abutting owners shall be ignored, and so as to obstruct and impede and prevent the use of other parts of the street in keeping open their tracks for the purposes of passage.

That they have no such right seems to be manifest, and the only ground which is advanced to support the claim is the provision in the charter of the plaintiff that the railroad shall be run as often as the convenience of passengers may require; and that, therefore, the grant confers all rights over the street which are necessary to accomplish the purposes specified, or as the counsel puts it: The company has the right to the use of so much of the street for the purpose of maintaining and operating its road as under all the circumstances is necessary to accomplish the result of running the cars as

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often as the convenience of passengers may require, and that as it cannot operate the road without removing the snow from the track, therefore, by necessary implication the grant carries with it the right to remove the snow from the tracts to other parts of the street, and allow it to remain there a reasonable time, just as in constructing or operating the road, the grant of the franchise gives to the company the right to occupy so much of the street as may be necessary temporarily for the deposit of rails, string pieces, sleepers and earth from trenches.

The whole claim, therefore, is founded upon the duty which is imposed upon the plaintiff because a privilege has been granted to it. In view of the fact that it has the right to use the public streets of New York for the running of its railroad, it has been required that is shall run its cars as often as the convenience of those for whom it was constructed should require. The claim founded upon this duty is that the plaintiff has a right to the use of the whole of the street, from curb to curb, at any time, and under any circumstances which it may deem necessary, to carry out in the most economical way this requirement of its charter.

It is at once apparent that no such claim can be sustained from this language of the grant. If the railroad company seeks to exercise such unusual powers, absolutely subversive of the rights of the public and of the abutting owners upon these streets, it is necessary to point to some more specific grant of power in its organic law, than this requirement that it shall afford the greatest facilities possible because of the privileges granted.

Conceding that it cannot operate the road without the removal of snow, how does the necessary implication follow that it has the right to obstruct every part of the street except that occupied by its tracks? Certainly the necessity of removing the snow imposes the obligations to remove it from its tracks and not put it upon other parts of the street where it becomes an obstruction to the use of the street by the other passers-by. As well might it claim that by implication as it is compelled to remove the snow it has the right to temporarily deposit the same in any public square belonging to the city. The company has no right to control or use or in any manner interfere with any part of the public street, except that actually included within its roadway. It has the right to operate a double track railway and nothing more, and no right to interfere with any part of the street not necessary for the construction and operation of that railway.

The duty is imposed upon the defendants to remove obstructions from the streets and to keep the streets in a condition for travel, and it is in the performance of this duty that they have attempted to regulate the use of these machines which pile up the snow upon both sides of the tracks, and prevent the use, either by the abutting owners or by the general public, of any other part of the street for the purpose of passage or access to their own premises.

It seems, therefore, clear that, as the grant which the plaintiff received from the city is to be construed most strictly against it, there is not a scintilla of authority, even if the Legislature could grant such authority, which we do not admit, conveyed by its charter which in any way justifies the extreme claim presented in the case at bar. As the law stands at present the authority which has been conferred upon the plaintiff is a mere license to use the streets of the City of New York for the operating of its railroad, and the running of its cars, and that is permitted simply because such use has been held to be consistent with the public use to which the streets have been devoted.

The extreme claim of rights and ownership absolute and independent of the rights of every other citizen, whether abutting owners or travelers, can no longer be sustained; and this company, in the exercise of its rights, simply because it is more economical to do so, cannot be permitted to invade the rights of the defendant and of every abutting owner along the line of the railroad. Even if the Legislature attempted to permit such an invasion of vested rights they are powerless to effect the object.

In the case of Sharp v. Rutland and Burlington R. R. (27 Vt., 149) it was held, and which has been referred to with approval by our Court of Appeals in the case of The People v. Squire (107 N. Y., 593) that "the police power of the State extends to the protection of the lives, limbs, health, comfort and quiet of all persons and the protection of all property within the State," and in the case in our Court of Appeals referred to, it was held that "the right to exercise this power cannot be alienated, surrendered or abridged by the Legislature by any grant, contract or delegation whatsoever, because it constitutes the exercise of governmental functions without which it would become powerless to protect those rights which it was specially designed to accomplish."

By contract with the people of this State the abutting owners bought certain rights, and these rights, it is, as above stated, the duty of the State to protect, and from this obligation it cannot discharge itself.

In respect to the streets of New York, this police power has been conferred upon the corporation by the Legislature, and it is the exercise of this power that is sought to be restrained in this action.

The imperative duty thus being cast upon the State to protect, and in the performance of that duty, having conferred upon the corporation the powers necessary to effectuate its obligation, strong and unequivocal language, showing a change in the legislative method of performing its obligations are absolutely essential before the corporation can be held to be deprived of its powers. No such legislation can be found, and the duty, therefore, rests upon the corporation to see to it that the rights of the individual and the public in the use of the public streets are protected.

The next question to be considered is as to whether the ordinance by which the city has attempted to regulate the use of the means of clearing the tracks by the railroad companies is valid or invalid. The main claim is that the power of regulation conferred upon the Common Council by the charter of the city cannot be delegated to the Mayor as is attempted to be done by the ordinance in question. It is not necessary to cite authorities for the purpose of showing that the corporation has no power to

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delegate any of its legislative functions, and so far as there is any delegation to the Mayor in the ordinance in question of any legislative function such ordinance may be void, but so far as the ordinance is within the powers of the Common Council it is valid.

The Common Council, as has been seen, has the right to regulate the use of the streets, highways, railroads and public places by foot passengers, animals, cars and locomotives, and they have, therefore, the right to prohibit the use of the streets in any way which shall appear to be an obstruction to the general public or a detriment to the abutting owners. The use of the snow ploughs, without question, encumbers the balance of the street, deprives the abutting owners of access and egress, and the general public of the use of the street alongside the roadways. The Common Council have the right to prevent this abuse, and to compel the railroad companies to cease interfering with rights of the abutting owners, especially when they exercise a right, no authority for which can be found in their organic law. The Common Council, therefore, had the right to prohibit the use of these snow ploughs and sweeping machines, and they had also the right to order that such use should not be permitted unless a license was granted by the Mayor so to do. So far, there is no delegation of authority, but this is merely a regulation of the use, over which they had complete control.

But it is said that a subsequent section of the ordinance goes further than this, and provides that the permission to use such snow ploughs or machines was to be determined by and continue only during the pleasure of the Mayor, and that, thereby, the Mayor is to determine and be the sole judge as to what way and how the license shall be granted. It may be true that this part of the ordinance is subject to the criticism passed upon it, but the balance remains in force.

The mere fact that a single section of an ordinance of this description is obnoxious to criticism, in no way invalidates the whole unless it is so intertwined and interwoven with it that it cannot be separated therefrom.

The clause in question is entirely separate and distinct. The ordinance is perfect without it, is definite in its terms and susceptible of enforcement. It would, therefore, seem to be a valid exercise of the power which is vested in the Common Council.

It is claimed, however, that the requirement as a condition precedent to the obtaining of a permit to use snow ploughs and sweeping machines, that the railroad company will not only remove the snow thrown up by such plough or machine, but also reduce the snow upon the highway adjacent to the tracks to such level as will make convenient for all vehicles the approach to the sidewalk, and make the whole width of the road safe for travel within twenty-four hours, is an unreasonable requirement, and, therefore, the Common Council have no power to make the same. The construction of this ordinance must necessarily depend upon the circumstances attending the case. The fact that these sweeping machines and snow ploughs pile up snow upon the side of the tracks is well established by the evidence which is contained in the papers before the Court. In the construction of this ordinance it would be impossible for the Court to shut its eyes to what is seen in the public streets after every fall of snow, and it is the regulation of this abuse which is aimed at by the requirement of the ordinance, and when the railroad companies have removed the snow which they have cast upon the side of the street, this requirement will be fulfilled. It is impossible (and impossibilities are never required) for the corporation to determine whether each particular atom of snow has been placed upon the side of the street off the streets, or whether it naturally fell upon the side of the street, and, therefore, they have adopted the general regulation that they shall reduce the snow to such a level as will make it convenient for all vehicles to approach the curbstone.

But there is a further answer to this proposition. It has already been stated that the corporation have the right to prohibit the use of these machines, because of the effect of their operation, and they have prohibited them except upon certain terms. If the railroad companies think the terms unreasonable they need not use the machines, They have no absolute right to their use, and if they desire a privilege they must take the privilege upon the terms which are offered to them. Simply because they must operate their road and run cars as often as the convenience of passengers may require, gives them no absolute right to carry out this power in any manner in which they see fit. The obligation must be fulfilled, having due regard to the rights of others, and simply for the reason that snow can be removed from the track more economically by the use of snow ploughs, gives them no right to the use of such instruments, invading as they do, the contract rights of others.—*The Daily Register.*

NEW YORK SUPREME COURT,

SPECIAL TERM.

In Wetmore v. New York Institution for the Blind et. al. the following points were decided:

Under a general residuary clause in a will lapsed legacies fall into the residue and pass to the residuary legatees.

The only exception to the rule is when the words used in the will expressly show an intention on the part of the testator to exclude such portions of his estate as are mentioned in any of the other clauses of the will from falling into his general residue.

A misnomer or misdescription of a legatee in a will does not invalidate the provision, if either from the will itself or other evidence the object of the testator's bounty can be ascertained, and to identify a particular corporation as the one intended where a name other than the corporate name is used the identity may be proved by parol.

Where a bequest is made to a corporation, and there are two corporations, neither of which can claim under the precise name used by the testator, it is for the Court to determine which of the two is best or more nearly described by the name.

Where the designation of a beneficiary under a trust in a will is indefinite and uncertain the trust is void.

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THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

August 7.

11285. Lillian Benton v. Henry Benton. For divorce. Com. sol., F. T. Browning.

11286. William H. Wixley, alleged lunatic. Upon petition of Levi H. Beynon for appointment of committee. Com. sol., B. A. Lockwood.

August 8.

11287. James B. Clarke et al. v. Robert Waldron and wife et al. To enforce mechanic's lien. Com. sol., John Ridout.

August 9.

11288. Mary F. Tyler v. William E. Tyler. For divorce. Com. sol., L. C. Williamson.

11289. James F. Barbour v. Albert McIntosh et al. Creditor's bill. Com. sols., Garnett and Mackall.

11290. Eustace E. O'Brien v. Lucy M. O'Brien. For divorce. Com. sol., J. G. Bigelow.

11291. Horace S. Cummings v. John L. Bartlett et al. Com. sol., R. Hagner.

CIRCUIT COURT.—New Suits at Law.

August 7.

28864. Nathan Stedman v. The Columbia Brick Co. Account, $450. Plffs attys, Johnson and Nordlinder.

28865. George M. & H. W. Offutt v. Miss Osceola Rainey. Judgment of Justice Davis, $97.70.

28866. John Maury Dove v. Jacob S. Duvall. Account, $283.16. Plffs atty, C. Carrington.

August 8.

28867. Samuel Carson et al. v. Augustus Davis, Jr. Note, $167.14. Plffs attys, Newton & Lavender.

August 9.

28868. Eunice Hassaurek v. Katharine Chase. Account, $500. Plffs atty, R. D. Mussey.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of P. H. Sheridan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of August, 1888.

IRENE RUCKER SHERIDAN, Ex'x,
MICHAEL V. SHERIDAN, Ex'r,
LINDEN KENT, Ex'r,
1712 N st. n. w.

33

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary English, Guardian, v. Mary Elizabeth Quill et al. } Eq. No. 11271.

Mary English, Trustee, having reported to the Court that she has sold the property described in these proceedings, to wit: Lot numbered four (4), in square numbered five hundred and eighty-five (585), to Eliza Quill, at private sale, for $2,000.00, it is, thereupon, this 6th day of August, A. D. 1888, ordered, adjudged and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of September, A. D. 1888.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.
33 By L. P. WILLIAMS, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 13th, 1888.

In the matter of the Estate of Lindsay Muse, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William H. A. Wormley and John F. Cook.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3152. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

August 13th, 1888.

In the matter of the Estate of Elizabeth MacLeod, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Norman S. Bestor and Orson H. Bestor.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3187. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 8th, 1888.

In the case of Frederick W. Pratt, Executor of Lewis Brown, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2742. Ad. D. 13. A. A. Brooke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 10th, 1888.

In the case of Lewis C. Reinburg, Administrator c. t. a. of Sarah A. L. Barnes (nee Martin), deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2756. Ad. D. 13. N. Dumont, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Mary A. Taylor**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1888.

O. B. WILLCOX, Adm'r,
2022 R st. n. w., Washington City.

32 No. 3142 Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **James Keith Edwards**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 3d day of August, 1888.

SARAH M. EDWARDS, Adm'x.
GEORGE B. EDWARDS, Adm'r.
918 Rhode Island av. n. w.

32 Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 23d day of July, 1888.

William H. Crumpton v. **Maggie Crumpton.** } No. 11209. Eq. Docket 28.

On motion of the plaintiff, by Mr. R. White, his solicitor, it is ordered that the defendant, **Maggie Crumpton**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bonds of matrimony on the grounds of willful desertion of the plaintiff by the defendant for the uninterrupted period of two years and adultery of the said defendant.

By the Court. E. F. BINGHAM, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business,

July 30th, 1888.

In the case of Benjamin F. Rittenhouse, Executor of **James J. Kenney**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
31 No. 2669. Ad. D. 13. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

In Re Estate of **Albert B. Baker**, deceased.

Upon consideration of the above petition, it is, by the Court this 20th day of July, A. D. 1888, *ordered* that notice of the above application, in the usual form, to the next of kin of the decedent to show cause, if any, why the same should not be granted, be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before Friday, the 17th day of August, A. D. 1888, to which day at 11 o'clock a. m., the case is hereby continued.

A. B. HAGNER.

A true copy. Test: DORSEY CLAGETT, Register of Wills.
30 Fred. W. Jones, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrick O'Dea et al. v. **Mary O'Dea Brown et al.** } In Equity No. 11087. Docket 28.

Thomas M. Fields, Trustee, having reported to this Court that he has sold the real estate described in this proceeding, to wit: lot 46 in Laurence O'Dea et al, subdivision of original lot 4, square 719, to T. C. Murray, for $365, it is, this 31st day of July, 1888, ordered that said sale be, and it is hereby, ratified and confirmed, unless cause to the contrary be shown on or before September 1, 1888.

Provided that a copy of this order be published once a week for the three successive weeks next preceding said date in the WASHINGTON LAW REPORTER.

By the Court. E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Lester A. Bartlett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of August, 1888.

32 CHAS. LYMAN, Adm'r.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Rebecca J. Ashby MacAllister**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of August, 1888.

32 JOHN F. MACALLISTER, 921 F st. n. w.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Sallie S. Gaither**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of July, 1888.

HENRY E. KALUSOWSKI,
ABERT M. READ,
31 No. 3137 Ad. D. 14 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Emeline Clarke**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of August, 1888.

JOHN E. LEMMON, Ex'r, 302 N. Y. ave. n. w.
33 No. 3181. Ad. D. 14. D. E. Cahill, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **George W. Seaver**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of August, 1888.

NELLIE S. SEAVER, Adm'x, 1229 N. Y. ave. n. w.
33 No. 3188. Ad. D. 14.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Guisseppe Mosea**, late of Stockton, New Jersey, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1888.

31 DORSEY CLAGETT, Register of Wills, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Laura V. Cowling et al. v. **Blanche Cowling et al.** } No. 10961. Docket 27.

The Trustees herein, Chapin Brown and Andrew B. Duvall having reported the sale of the real estate in the proceedings mentioned, viz., lot 2 and part of lot 1 in square 252, in City of Washington, D. C., containg 6020½ sq. feet at $4.10 per sq. feet, amounting to $24,684.05 to Walter C. Johnson, it is, by the Court, this 31st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last mentioned date.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Christina Bremer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of August, 1888.

JOHN A. SPROESSER, Ex'r, 205½ F st. n. w.

32 No. 3160. Ad. D. 14. Simon Wolf, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the case of William W. Roberts, Executor of Richard Roberts, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 31st day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

32 No. 2672. Ad. D. 13. McPherson & Carlisle, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the matter of the Estate of **Robert Rose**, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased has this day been made by Wm. H. Marbury, of Alexandria, Va.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of August next, at 11 o'clock a. m., to show cause why Letters of Administration d. b. n. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. E. F. BINGHAM, Chief Justice.

Test: DORSEY CLAGETT, Register of Wills.

John Goode and Willis B. Smith, Proctors.

32 No. 6516. Old Series.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth H. Mullikin**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of July, 1888.

BENJAMIN H. STINEMETZ,
JOHN H. OLCOTT,

31 No. 3164. Ad. D. 14 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Louisa Harrison Chew**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

ROBERT S. CHEW, Adm'r, Riggs & Co.

31 Wm. G Johnson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Emma Cholet**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

MARY E. HUSSEY. Adm'x, 1208 H st. n. w.

31 Frank T. Browning, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of July, 1888.

John L. Mafflitt v. **Emma H. Mafflitt et al.** } No. 11167. Equity Docket 28.

On motion of the plaintiff, by Mr. A. M. McBlair, his solicitor, it is ordered that the defendants, **Mary R. Mafflitt, Clarence D. Mafflitt and Robert S. Mafflitt, Caroline D. Mafflitt, Alfred M. Mafflitt, Katherine L. Mafflitt, John M. Wright, Joshua G. Wright, Mary A. Wright, Thomas H. Wright and Caroline L. Wright**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of lot 19, square 255, in the city of Washington, District of Columbia, the same being No. 1214 K St., N. W.

By the Court. E. F. BINGHAM, Chief Justice, &c.

A true copy. Test: R. J. MEIGS, Clerk, &c.

31 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Freeman Grant Thompson v. **Maud W. Finley et al.** } In Equity. No 11179.

Upon consideration of the report of George E. Emmons, trustee, of the sale of all of lot 12 in square numbered 764, except the west eight feet front by the depth thereof, as particularly described in these proceedings, to John M. Norris, at private sale for the sum of seventy-five hundred dollars cash, it is, this 31st day of July, 1888, by the Court, ordered that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the first day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before the first day of September, 1888.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

31 By W. E. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Alexander Y. P. Garnett**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1888.

HENRY WISE GARNETT, Ex'r.

30 No. 3156. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Benjamin H. Keller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of July, 1888.

CATHARINE ANN KELLER, Ex'x, 1218 28th st. n. w.

30 No. 3144. Ad. D. 14. S. A. Cox, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration on the personal estate of **Joseph B. Cecil**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of July, 1888.

EDWIN H. HARNER, Adm'r, 1018 25th st. n. w.

30 No. 3157. Ad. D. 14. Wm. T. Bailey, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel McMahon**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of July, 1888.

MARY McMAHON, Adm'x, Anacostia P. O., D. C.

30 No. 3138. Ad. D. 14. J. C. De Putron, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Peter McIntyre**, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of July, 1888.

SISTER BEATRICE DUFFY, Adm'x,
Providence Hospital.

30 No. 3135. Ad. D. 14. C. C. Lancaster, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Ida Forrest et al. v. **Abraham F. Kendick et al.** } No. 11065. In Equity.

It is, this 25th day of July, A. D. 1888, ordered that the sale reported by the trustee in the above entitled cause in his report filed herein, be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned day.

By the Court. E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

30 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the case of **Sarah J. Kennedy**, Administratrix c. t. a. of **Joseph C. C. Kennedy**, deceased, the Administratrix c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 17th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 2791. Ad. D. 13. Carusi & Miller, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the matter of the Estate of **Benigne Pargny Becker**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration c. t. a. on the estate of the said deceased has this day been made by Victor Becker.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters of Administration c. t. a. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and in the *Evening Star* previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 3162. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the matter of the Estate of **James C. Reed**, late of U. S. Army, stationed at Washington, D. C., deceased.

Application for Letters of Administration on the Estate of the said deceased, not already administered, has this day been made by Patrick H. Lynch, of Bristoe, Prince William Co., Va.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 10 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased, not already administered, should should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.

30 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

June 20th, 1888.

In the matter of the last Will of **Eliza A. Offutt**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Richard P. Jackson, named as Executor.

All persons interested are hereby notified to appear in this Court on Friday, the 10th day of August, 1888, next, at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. A. B. HAGNER, Justice.

Test: DORSEY CLAGETT, Register of Wills.

30 J. J. Waters, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 20th, 1888.

In the case of Ada G. Adams, Administratrix of Crawford C. Adams, deceased, the Administratrix aforesaid has, with the approval of the Court, appointed Friday, the 10th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administratrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 2569. Ad. D. 13. James F. Hood, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 24th, 1888.

In the matter of the Estate of Charles Homiller, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by James H. Taylor.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next, at 12 o'clock m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. EDWARD F. BINGHAM, Chief Justice.

30 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Ray
v. } Equity No. 10623.
A. S. Carter et al.

Jackson H. Ralston and David D. Stone, the trustees appointed herein, having reported the sale of the twenty four feet front by the depth of lot nine (9) in square eighty-one (81), lying next north of the south twenty-four feet of said lot, and being in Washington, D. C., to Anderson W. Shields for the sum of $1,300, it is, this 21st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of August, A. D. 1888.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER before said 21st day of August, A. D. 1888.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 23, 1888.

In the matter of the Estate of Almira W. Powell, late of the City of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by George W. Brown, of Washington, D. C.

All persons interested are hereby notified to appear in this Court on Friday, the 17th day of August next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. E. F. BINGHAM, Chief Justice.

Test: DORSEY CLAGETT, Register of Wills.

30 No. 3159. Ad. D. 14. Henry Wise Garnett, Proctor.

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Argument to Jury in Criminal Cases.

Two recent cases suggest an inquiry into the conduct of arguments to the jury in criminal cases.

In the case of Newman *vs.* Commonwealth (5 Cent. Rep., 497, Pa.) it was held that, under an indictment, charging defendants with conspiracy against the employees of certain coal operators, to compel them to quit working by force of threats or menaces of harm, the exhibition by the counsel for the prosecution as part of his argument to the jury of a caricature from *Puck*, entitled "Suckers of the Workingmen's Sustenance," under permission of the Court, was not ground for reversing a judgment of conviction. The Court, in a *per curiam* opinion, said:

"With reference to the exhibition of the picture, exhibited by the counsel for the prosecution as part of his argument to the jury, we cannot say that the Court was wrong in permitting it. Things of this kind are very much a matter of discretion, and we are not disposed to review them unless we are satisfied that some serious wrong has been done."

The decision was perhaps based upon a civil case, (Ordway *vs.* Haynes, 50 N. H., 159), is cited by counsel for the commonwealth, but not referred to in the opinion of the Court in which it was held that an engraving may be used before the jury, to illustrate the positions of counsel or the statements of a witness, as well as a sketch made by pen or pencil or in any other way, unless the Court can see that there is something about it that is calculated to mislead the jury.

The other case above referred to is Heil *vs.* State (8 West. Rep., 393, Ind.) which was a prosecution for larceny, and the prosecuting attorney was held not to have transgressed the privilege of fair debate because he referred to recent riots in Cincinnati and the burning of the court house by a mob, assigning as a cause the lax administration of criminal law in that city. The Court saying: "The remarks alluded to above had reference to an historical event, concerning which the jury were supposed to be familiar, both in respect to its occurrence and the causes to which it was attributed. As there was no allusion made to the defendant in that connection, or to his being in any manner concerned in the riots, we cannot say that the privileges of fair debate were transgressed."

Counsel for appellant cited in his argument before the Supreme Court the case of Ferguson *vs.* State (49 Ind. 33), which was not referred to in the opinion filed by the Supreme Court and in which it was held that on the trial of an indictment for murder, it was error for counsel for the State, in argument to the jury, to comment on the frequent occurrence of murder in the community and the formation of vigilance committees and mobs, and to state that the same are caused by laxity in the administration of the law, and that they should make an example of the defendant, and for the Court, upon objection by the defendant to such language, to remark to the jury that such matters are proper to be commented upon.

These cases may be regarded as extreme and of very doubtful propriety, since it is very probable injury resulted to the defendants by such incendiary harangues, and the judgments of the courts seem to be practical denials of fair trials upon the evidence.

On examination, the decisions do not generally appear to permit such latitude in argument, while the cases do seem to support rules sufficiently broad to insure the conviction of any defendant against whom there is any competent evidence and to amply protect the rights of society.

In the adjucated cases, vituperation and irrelevancy have frequenly been permitted; but in no other decisions do we find sanctioned the use of inflammatory harangues referring to furious mobs about to burn court houses and perhaps cremate the jury unless deterred by the entry of a conviction of the defendant for larceny, or the use of highly colored pictures of misguided coal miners robbed of the wages of their toil by labor reform suckers.

A caricature in the same journal entitled the "tattooed man," is supposed to have had a marked effect upon the national campaign of 1884; yet the Court assumed that the "suckers of the workingmen's sustenance" had no effect upon the susceptible minds of a quarter sessions jury.

If it is not required to confront the accused by the witnesses against him, and if, outside of the evidence, dramatic influences without limit may be introduced to terrify stupid jurors or to incite them to make an example of the accused, why might the district attorney not have attached to his office an artist with an official red pencil or employ his office boy to make stage thunder while he exclaimed to the jury "Hear the howling of the mob!"

Fair trials seem often denied by our courts, when one considers the strictness on the one hand with which technical questions of practice have been applied in recent cases involving liberty and life; refusals to consider appeals upon their merits for failure to present exactly the points in the courts below at precisely the right time, the frequency with which it is held that important questions and rights have been waived by the accused, even in capital cases, where the accused is often, by reason of ignorance, poverty or appointment of the judge, represented by counsel who ought to be considered incapable of waiving any rights of their unfortunate clients; and on the other hand the unfairness encouraged in the prosecuting attorney's conduct of the trial.

Such decisions rather incite mobs, and judicial approval of "caricatures of the suckers of the workingmen's sustenance" rather lessen popular confidence in trials between coal barons and workingmen and go some way to justify the recent expressions in the Congressional debates concerning the inefficacy of *quo warranto* and other similar proceedings in State courts.

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The increasing tendency in criminal procedure to deny reversals for irregularities and on the other hand to require the accused to present his defense with technical strictness, should be accompanied by more stringent regulations requiring fairness in the conduct of prosecuting attorneys and excluding matters for which the individual defendant is not answerable.

We will attempt to ascertain some of the limits of fair argument as determined by the decisions, particularly the more recent ones.

General Rules.—The conduct and management of the argument on the trial of either a civil or criminal prosecution is largely within the discretion of the trial court, and it is only when some abuse of this discretion, to the probable injury of a party, is shown, that an appellate court will interfere. ("Misconduct of Counsel in Argument," by W. F. Elliott, Esq., 16 Cent. L. J., 406; Morgan *vs.* Hugg, 5 Cal., 409; Duffin *vs.* People, 107 Ill., 113; Lafayette *vs.* Weaver, 92 Ind., 477; Epps *vs.* State, 102 Ind., 539; 1 N. E. Rep., 492; Shular *vs.* State, 105 Ind., 289; 3 N. E. Rep., 870; Scripps *vs.* Reilly, 35 Mich., 371; State *vs.* Hamilton, 55 Mo., 520; Rehberg *vs.* Mayor, 99 N. Y., 652; 2 N. E. Rep., 11; Kaime *vs.* Trustees, 49 Wis. 371; 5 N. W. Rep., 838).

The allowance of an improper or irrelevant cause of argument is no ground of exception, without showing that the jury were erroneously instructed as to the weight to be given to it. (Commonwealth *vs.* Byce, 8 Gray, 461).

But it may be laid down as law, and not merely discretionary, that when counsel abuses his privilege to the manifest prejudice of the opposite party, it is the duty of the judge to stop him then and there, and if he fails to do so, and the impropriety is gross, it is good ground for a new trial. (Dickerson *vs.* Burke, 25 Ga., 225; Ferguson *vs.* State, 49 Ind., 33; Proctor *vs.* DeCamp, 33 Ind., 559; State *vs.* Guy, 69 Mo., 430; Jenkins *vs.* N. C. Ore Dressing Co., 65 N. C., 563; Devries *vs.* Phillips, 63 N. C., 53; State *vs.* Underwood, 77 N. C., 502; Coble *vs.* Coble, 79 N. C., 53, 589; Hilliard on New Trials, 225.)

It is the duty of the presiding judge to interfere of his own motion to prevent a breach of the privilege of counsel, and if he fails to do so, and the abuse produce the conviction so that injustice resulted therefrom, it is the duty of the appellate court to award a new trial. (Berry *vs.* State, 10 Ga., 511; Saunders *vs.* Baxter, 9 Heisk, 369; Perkins *vs.* Guy, 55 Miss., 153; Cavanah *vs.* State, 56 Miss., 209; Martin *vs.* State, 63 Miss., 505).

Within the limits of the testimony the arguments of counsel should be free; but that freedom does not extend either to the statement or assumption of facts or to commenting on facts not in evidence, to the prejudice of the adverse party. When counsel are permitted to state facts not in evidence and to comment upon them, the usage of the court regulating trials is departed from, the laws of evidence are violated, and the full benefit of trial by jury is denied. Proffatt on Jury Trials, § 250; Cross *vs.* State, 68 Ala., 476; Wolffe *vs.* Minnis, 79; Ala., 389; McNabb *vs.* Lockhart, 18 Ga., 495; Dickerson *vs.* Burke, 25 Ga., 225; Bill *vs.* People, 14 Ill., 432; Kennedy *vs.* People, 40 Ill., 489; Yoe *vs.* People, 49 Ill., 410; Hennies *vs.* Vogel, 66 Ill., 491; Read *vs.* State, 2 Ind., 438; Ferguson *vs.* State, 49 Ind., 33; Combs *vs.* State, 75 Ind., 215; Morrison *vs.* State, 76 Ind., 335; Proctor *vs.* DeCamp, 83 Ind., 559; Bessette *vs.* State, 101 Ind., 85; Epps *vs.* State, 102 Ind., 539; State *vs.* Anderson, 104 Ind., 467; 1 West. Rep., 175; Brow *vs.* State, 103 Ind., 133, 2 N. E. Rep., 296; People *vs.* Dane, 59 Mich., 550; 26 N. W. Rep., 781; Perkins *vs.* Guy, 55 Miss., 153; Cavanah *vs.* State, 56 Miss., 299; State *vs.* Lee, 66 Mo., 165; State *vs.* Jackson (Mo.), decided June 4, 1888, not yet reported; Bohanan *vs.* State, 18 Neb., 57; 24 N. W. Rep., 391; Tucker *vs.* Henniker, 41 N. H., 317; State *vs.* Smith, 75 N. C., 306; Union Ins. Co. *vs.* Cheever, 36 Ohio St., 201; Cartwright *vs.* State, 16 Tex. App., 473; Brown *vs.* Swineford, 44 Wis., 282).

In the case of State *vs.* Jackson, decided by the Supreme Court of Missouri on June 4, 1888, not yet reported, the district attorney made references to mobs and lynch law, which were deemed sufficient cause for reversal, the Court saying:

"In State *vs.* Kring, 64 Mo.,, 591, the circuit attorney made the following remarks: 'If you wrong the accused by finding him guilty, that wrong can be righted, because there are two courts above this in which the accused can have this reversed—the Court of Appeals and the Supreme Court. If you are not justified in finding this man guilty, it is in their power to rectify any error; while if, on the other hand, you turn the murderer loose in the community, no matter how frail might be the scaffolding, it takes him forever in the light of freedom again; you will make a wound in this community that will never be healed.'

"Passing upon these remarks this Court said: 'The statement that the higher courts referred to had the power to review the finding of the jury on the weight of evidence was calculated to induce the jury to disregard their responsibility. * * * The judge presiding at the trial in our opinion, should not have permitted such remarks to be made, on the close of the argument, without a prompt correction.'

"The only difference between the case referred to and the one at bar is that in the former an attempt was made to induce the jury to find a verdict of guilty upon the ground that if they committed any error it would be corrected by an appellate court, while here a similar attempt was made to induce a verdict of guilty, by an intimation amounting almost to a covert threat that, if they failed to find a verdict of guilty, their error would be corrected by an outside tribunal acting independently of, and in defiance of all law.

"Language fails to express in terms sufficiently strong the condemnation which should always promptly attend the utterance of such unworthy words, when a human being is on trial for his life before a tribunal organized for the purpose, and for the sole purpose of administering the law."

If counsel, in summing up, misstate the evidence to the jury, the court below may grant a new trial; their refusal to do so is however not the subject of review upon a writ of error. (Thompson *vs.* Barkley, 27 Penn., 263.)

The rule is stated in Shular *vs.* State, (2 West. Rep. (Ind.).) If counsel go beyond the evidence and bring in foreign and unproved matters, courts should interfere, and if the trial court

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does not interfere, and the matter improperly brought before the jury is of a material character, the court may reverse the judgment. But it is not every violation of the rules governing the discussion of cases before the jury that will entitle the complaining party to have the verdict set aside; for, if the statement be an unimportant one or one not likely to wrongfully influence the jury, the verdict will be upheld.

And in Combs *vs.* State (75 Ind., 221) it is said: "To rigidly require counsel to confine themselves directly to the evidence would be a delicate task both for the trial and the appellate courts, and it is far better to commit something to the discretion of the trial court than to attempt to lay down or enforce a general rule defining the precise limits of the argument. If counsel make material statements outside of the evidence which are likely to do the accused injury, it should be deemed an abuse of discretion and a cause for reversal, but when the statement is a general one and of a character not likely ot prejudice the cause of the accused in the minds of honest men of fair intelligence, the failure of the Court to check counsel should not be deemed such an abuse of discretion as to require a reversal."

A statement by the county attorney that "the defendant had been guilty of one offense, and would commit a greater offense to cover the other up" which was not objected to, held not ground for new trial, it not appearing whether reference was intended to the offense on trial or some other offense." (State *vs.* McCool, 34 Kan., 613; 9 Pac. Rep., 618.)

In a trial for murder, the district attorney referred to another man convicted of murder, then in jail, who should be released, if no conviction should be found in this case, held ground for reversal. (Newton *vs.* State, 21 Fla., 53.)

Abusive Language; Exciting Prejudice.—To make vituperation and abuse grounds for reversing a judgment, it must appear that the remarks were grossly unwarranted and improper; that they were of a material character and calculated injuriously to affect the defendant's rights. (Pierson *vs.* State, 18 Tex. App., 524.)

Where the county attorney, in his closing address, said, "the defendant in this case has stooped so low as to drag before you the infidelity of his dead wife, and publish her before the court house as a prostitute." The Court held this language not cause for new trial, remarking, "We cannot deny that this remark was unfair. A defendant has a right unquestionably to introduce all such matters of defense as are admissible and calculated to mitigate, excuse or justify his actions, and while the prosecuting officer has a right to comment upon the nature and character of such defenses, still in doing so it is most improper to denounce and villify him on account of his defenses. (Pierson *vs.* State, 18 Tex. App., 524.)

Counsel for defendant stated that he could personally sustain the general reputation of the defendant. Thereafter the prosecutor said that he had personal knowledge that the defendant was reputed to be a hotel thief, and that he had been published and portrayed in the Police Gazette as such. The Court held that the speech of the prosecutor went beyond the bounds of propriety; but that the evidence in the record fully sustaining the verdict, refused to grant a reversal." (Heil *vs.* State (Ind.), 8 West. Rep., 393.)

In the opening address the prosecuting attorney called defendant a "dirty dog" and stated that in separating the prosecuting witness from her companions he acted "like a dirty dog as he was." The Court refused to grant a new trial, saying: "It was, strictly speaking, a breach of professional decorum to apply opprobious epithets to the appellant in advance of the introduction of any evidence from which disparaging inferences might have been drawn, and the circuit court would have been justified in restraining the prosecuting attorney from the use of such epithets in a merely opening statement; but the breach of professional decorum thus involved, ought not to be regarded as of sufficient importance to cause a reversal of judgment (Anderson *vs.* State, 104 Ind., 466; 2 West. Rep., 341; 4 N. E. Rep., 63); and this is said in a case where the Court admits "there is room for grave apprehension that the jury may have made a mistake in the conclusion at which they arrive."

The prosecutor may comment on the appearance of defendant in giving his testimony. (Huber *vs.* State, 57 Ind., 341.)

In a prosecution for murder, to refer to defendant as, "a murderer" is not ground for reversal. (State *vs.* Griffin, 3 West. Rep., 820; 89 Mo., 49.)

Where defendant's character had not been impeached but a witness for plaintiff had been contradicted by a witness for defendant, counsel said "that no man who lived in defendant's neighborhood could have anything but a bad character; that defendant polluted everything near him, or that he touched; that he was like the upas tree, shedding pestilence and corruption all around him," it was held ground for new trial. (Coble *vs.* Coble, 79 N. C., 589.)

The prosecuting attorney said, "that saloon keepers always had a gang organized to swear them through, and the jury should not believe a saloon keeper under oath; that only a short time ago a saloon keeper had sold liquor to a man and made him drunk and he froze to death. That he knew personally the saloon keeper in the case, and that he was guilty of this, and he was sure of other crimes." This language the Court held ground for a new trial, remarking; "The Constitution guarantees to every person accused of crime a right to meet the witnesses against him face to face, but the guaranty stands for nothing, if, after the evidence is closed, the State may avail itself of the personal knowledge of the prosecutor concerning the defendant's guilt not only of that, but of other crimes, conveyed to the jury accompanied with statements ingeniously contrived to excite their prejudice against him. If a conviction is had in any case it is essential that it should have been secured according to the facts in the case legally produced to the jury, agreeably to established rules in judicial proceedings, and not by methods which afford the accused no opportunity of meeting the assertions made by any one claiming to have personal knowledge of his character of guilt." (Brow *vs.* State, 103 Ind., 133; 1 West. Rep., 180.)

In the second trial of the case the public prosecutor denounced the defendant as a "fellow"

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and a "land thief" and "as guilty as hell," and asserted that the new trial had been obtained "by a dodge and technicality" boasting of his ability to convict him as many times as he could get a new trial. A new trial was granted although the trial judge admonished the jury to disregard the language. (Hatch *vs.* State, 8 Tex. App., 416.)

In a murder trial the prosecutor said: "Defendant is a man of bad, dangerous and desperate character, but I am not afraid to denounce the butcher boy, although I may, on returning to my home, find it in ashes over the heads of my defenseless wife and children." Held ground for reversal. (Martin *vs.* State, 63 Miss., 505.)

The county attorney used the following language: "This defendant is a contemptible and pusillanimous puppy. He comes into this court with the swaggering insolence of a grocery bully, and pleads not guilty to the charge. During the dead hours of night, while his family were at their humble home shedding tears of regret over the sad downfall of the husband and father, the man, this biped is bedding up with these prostitutes. Had I the command of language to stand here and express my contempt of this thing, I could stand until the dawn of the resurrection day, and then say less than he merits. If I were going to establish a hell on earth, and invade the realms of darkness for one to supervise it, I would leave there and come back here and take defendant, for he is a fair representative of the devil." Held ground for new trial. (Stone *vs.* State, 22 Tex. App., 185.)

Knowingly and persistently propounding irrelevant and impertinent questions for the purpose of prejudicing the jury may afford ground for reversal. (Alexander *vs.* State, 21 Tex. App., 406.)

Where, at the close of the opening address, persons in the court room applauded and in his closing argument the prosecuting attorney alluded to and approved it, and the Court neither checked the audience or cautioned the jury, held ground for new trial. (Cartwright *vs.* State, 16 Tex. App., 473.)

Reference to omission to testify and former trials.—Where the prosecuting attorney, refers to the fact that defendant has not testified in his own behalf, the defendant is entitled to a new trial. (Long *vs.* State, 56 Ind., 182; State *vs.* Ryan, 70 Iowa, 54; Commonwealth *vs.* Scott, 123 Mass., 239.)

By statute in Missouri the defendant in a criminal case may become a witness in his own behalf as to such matters as he may choose.

In State *vs.* Graves, decided June 4, 1888, (to be reported in 15 West. Rep.) the Court decided it was reversible error for the district attorney to comment upon the omission of defendant to testify in regard to other matters.

Reference to the fact that the defendant did not testify, while matter for objection at the time is not a cause for taking the case from the jury. (Commonwealth *vs.* Worcester, 141 Mass., 58; 2 N. Eng. Rep., 38. As to the right of district attorney to comment upon the absence of one of defendant's former witnesses, see Woodward *vs.* Leavitt, 107 Mass., 453; Commonwealth *vs.* Harlow, 110 Mass., 411; Learned *vs.* Hall, 133 Mass., 417.)

Reference to a former trial is improper but if the court checks the reference and the speaker immediately desists, it is not ground for new trial. Petite *vs.* People, 8 Colo., 518, 9 Pac. Rep., 622.

Where the prosecuting attorney said: "Will you believe this man, this person, who has told so many lies, and who has just seen the shadow of the gallows," it was held not so distinct a reference to a verdict upon a former trial as would require a reversal. (Boyle v. State, 2 West. Rep., 788; 195 Ind., 469.)

Time of Objecting.—To raise the question in the appellate court, it is generally held necessary to make objection and save an exception in the trial court. (Gillooley *vs.* State, 58 Ind., 183; State *vs.* Watson, 63 Main, 128; Commonwealth *vs.* Worcester, 141 Mass., 58; 2 N. Eng. Rep., 38; Bradshaw *vs.* State, 19 Neb., 644; 22 N. W. Rep., 361; Bohanan *vs.* State, 18 Neb., 57; 24 N. W. Rep., 391; McLain *vs.* State, 18 Neb., 154; 24 N. W. Rep., 720.)

It is too late to object to remarks in argument, for the first time in motion for a new trial. (State, *vs.* Forsythe, 89 Mo., 667; 6 West. Rep., 438.)—*Albert B. Guilbert in Central Law Journal.*

Supreme Court of the District of Columbia.

IN EQUITY.

LAMON *vs.* McKEE ET AL.

1. An order of injunction may issue in a proper case in chancery before the subpœna is issued; may be served and is binding on the defendant when served; and, therefore, an injunction otherwise properly issued and served is valid, though the subpœna be attested in the name of a deceased justice of the court.
2. An undertaking as required by Equity Rule 40 is a necessary prerequisite to the validity of an injunction, except in cases mentioned in said rule.

Before BINGHAM, Chief Justice.

Opinion of the Court, delivered July 20, 1888.*

The CHIEF JUSTICE. In this suit a bill in equity was filed seeking to restrain the defendants from drawing certain money from the United States Treasury. The bill is very long and sets up the history of the transaction in connection with the claim known as the Choctaw Claim against the United States Government, and the final adjudication of the claim in favor of the claimant, together with an act of Congress directing its payment out of the Treasury of the United States, to the Choctaw Nation, on requisition drawn in favor of any person they might designate. A preliminary injunction was issued.

Since the filing of the bill an application has been made for a rule to show cause—and that rule has been granted against the defendant—why the defendant should not be attached for contempt, upon the allegation that the defendant notwithstanding the restraining order issued at the time has drawn the money in question from the Treasury Department.

* This opinion was delivered orally by the Chief Justice who regretted that he had not time to put his views in writing. The exact and entire language of the Court is not given, but the substance and general reasoning is believed to be accurately set out.

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The defendants have appeared and answered. They admit that they drew the money from the Treasury Department as charged by the complainant, but say that the restraining order was invalid, because the writ of subpœna that was issued in the case was not properly attested and bore the name of the late Chief Justice who is deceased; secondly, he says that the restraining order was issued without any undertaking having been given as directed by Equity Rule 40 of this Court, and that, therefore, the restraining order was invalid and of no force or effect; thirdly, he says that the act of Congress contemplates the payment of this money to the Choctaw Nation; that Congress has entire control and jurisdiction over this matter as to whom the money should go, and that it is not competent for any court to interfere with the due execution of the act of Congress.

Taking these matters up in their order I shall endeavor to state very briefly the conclusions reached.

The first point, that the writ of subpœna was not attested by one of the justices of this court, is a point that so far as this matter is concerned, is in my judgment, not of any importance. It is very well settled by the authorities that an order of injunction may issue in a proper case in chancery before the subpœna is issued, may be served and is binding upon the defendant. In this case it is true that the order of injunction is indorsed or printed and signed upon the back of the subpœna; but it is not, therefore, a part of the subpœna. It is attested and signed by the justice who issued it, and is an instrument to be construed and disposed of by itself as much so as if it were on a separate piece of paper. That being so, it is quite clear under the authorities that the defendant cannot excuse himself from obeying this order of injunction because an invalid writ of subpœna was issued to him, or because no writ of subpœna at all has been issued. The case can certainly present itself in no worse light in that respect than if no subpœna whatever had been issued, but simply the order of injunction had been made.

I should have no difficulty, however, in construing the statute in regard to the duty of the justices of this Court in testing writs. The language of the statute is that these writs may be tested by any justice of the Supreme Court of the District. I have no doubt that that is a mandatory provision. The object of Congress was, in using that language, not to make it discretionary with the justices whether they would test these writs, but to permit any justice of the Court to sign the writ; not to confine it simply to the Chief Justice or any particular justice, but that any justice of the Court might sign the writ. If it was to be a matter of indifference whether the writ were attested by any justice or not, the provision would be altogether a foolish one. It would simply be foolish to provide in substance that any justice of the Court might test any of the writs issuing from the Court, but no matter whether they did or not the writ would be just as good and just as valid. I do not think that affects the order of injunction.

The next proposition is a far more serious one in my estimation. It is provided by Equity Rule 40 of this Court that no injunction, except in certain specified instances, shall be issued except upon the precedent condition that an undertaking be given by the complainant possessing peculiar and specific conditions. He shall agree to submit himself to the jurisdiction of the court, so that the court, in the event it is found the injunction was wrongfully issued, may assess the damages against him incurred by the defendant by reason of such wrong. Upon the proposition as to the validity or invalidity of injunctional orders, and as to whether or not a disobedience of an injunctional order is or is not contempt on the part of the defendant, there are two classes of authorities which establish distinct propositions, of which there does not seem to be any doubt. The first class of authorities is to the effect that an injunctional order is valid so as to command the obedience of the defendant and place him in contempt if he disobeys, notwithstanding it may be erroneous, and notwithstanding there may be irregularities connected with its issue provided the court had jurisdiction of the subject-matter and jurisdiction of the person.

Another class of cases is to the effect that injunctional orders issued where the court has no jurisdiction of the subject-matter are of no avail; are null and void; as for instance, the Illinois cases which were brought to our attention. Thus, where an attempt was made to enjoin the authorities of certain townships together with the people, from holding an election upon a given subject at a certain time, in pursuance of some act of the legislature in that State, it was held that a court of equity had no jurisdiction whatever to interfere in matters of that kind, that such matters belonged to the legislative department of the State government, and were political in their character, and to be determined by the legislature and not by the judicial authorities; and that hence upon a bill filed asking for an injunction, an injunction issued under such circumstances was entirely void and inoperative, and as a consequence the defendant could not be held to be in contempt for disobedience.

But there is another class of cases, two of which have been cited in this case, to the effect that where the law requires a certain precedent thing to be done before an injunction shall issue, and where the injunctional order itself contains a condition that the precedent thing shall be done before the order issues, in that event if the order issues without the precedent thing being done, the order will be null and void and of no effect; will never take effect so as to be obligatory upon the defendant, or to place him in contempt if he does not comply with it. For instance, in a case in Massachusetts, it was provided that upon the filing of a bill an injunction might issue under specified conditions; and in a case where a bill was presented to a judge at Chambers and an order granted upon the filing of the bill directing the clerk to issue an order of injunction, and the order was issued before compliance with the conditions, it was held by the Supreme Court of Massachusetts, Chief Justice Grier delivering the opinion of the Court, that the injunctional order was invalid and of no legal force, and could not bind the defendant so as to place him in contempt if he disobeyed.

Again, in Virginia, it was held by the Court of

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Appeals of that State, in a case reported in 2 Henning & Mumford, that where the statute required that a bond should be filed before any injunctional order should issue, and the order granted by the judge was that the injunction should be granted upon the usual terms and the order was issued and put into the hands of the officer, and was served upon the defendant without any bond being filed, it was held that the order itself never took effect, had no force or effect until a bond was filed, and that the defendant was consequently not guilty of contempt.

There are one or two other authorities to the same effect to which my attention was called. This doctrine is adopted and laid down by High in his work on Injunctions.

I do not understand it to be seriously argued or claimed that Equity Rule No. 40 is not a valid rule; that is, that it is not within the scope of the powers granted to the Court by Congress to make rules and regulations in regard to the practice of the Court. I think it is clearly so. It is not intimated that it ever has been questioned or that any decision has been made to the contrary. It has been held that these rules when made by the General Term are valid and binding law; that they become laws to the Court and to all parties interested. As has been stated, it is not merely a law governing the officers of the court and the parties litigant in the court and one that may be set aside by the Court at its pleasure, exercising its own sound discretion at any time in any particular case, followed or not, as may seem to be wise and just in any particular case. It is not a rule of that kind. None of the rules made in pursuance of this power by the General Term are rules of that kind. They are rules adopted by the General Term, that, while they stand, are binding upon all of the courts, Criminal, Equity, Circuit and General Term. Until altered, revised or repealed by the authority that made them, the General Term, they stand. In any particular case the General Term is bound by any rule that has been enacted or made by the Court in pursuance of this authority; any such rule is as binding upon the General Term as would be an act of Congress. The judges cannot set it aside simply for the purpose of carrying out some particular views, they may have in some particular case. They must either repeal it absolutely or follow it until it is repealed.

It would hardly be claimed that if this bond or undertaking provided for in this rule had been executed and approved by the Justice, that this order of restraint issued by Judge Cox would not be entirely valid, notwithstanding he does not in the rule itself require the undertaking to be given. But the moment he made this order of restraint, that moment the provision of the rule, the condition contained in the rule, intervened and said that order must not issue until the condition of the rule was complied with and an undertaking given as then required. I cannot see how any other construction can be given to this rule nor how to give the rule the proper effect, except to hold that this order could not issue out of this Court; that it was beyond the power of any justice to make an order and issue it without conforming to the conditions contained in the rule itself. If it could be done then the rule itself is impotent, and might as well be so much blank paper instead of what it was intended to be, a valid, wise and beneficent rule of practice, such as I esteem it to be, one that ought to have been made and one that ought to be enforced.

Therefore without undertaking to enlarge upon this point, although I might do so to some considerable extent, I have come to the conclusion that this order of injunction was inoperative, and could have no force or effect until this undertaking had been given; that its issuing under such circumstances was not a mere irregularity, was not merely erroneous, but was a thing having no life or vitality until obtained by the condition of that rule being performed by the execution of the undertaking therein required; and such being the case the defendant is necessarily excused from the charge of contempt.

I come to this conclusion quite reluctantly, because I may as well say I do not consider that the excuses of the defendant could avail him at all for a moment, if I thought the order a valid order. I do not think he is entitled to say that for fear a Department of this Government might exercise its lawful authority with reference to this claim or the payment of this money he must therefore be excused by another Department of the Government for violating its order and taking the money, because, forsooth, the action of the Legislative Department of the Government might delay more or less the payment of the money, I do not think that to be any excuse.

The other question involved in the case it is not necessary for me to decide. It is an interesting question, and one which is not mooted at least for the first time, although, so far as I have observed, no case exactly like this has ever been decided. I have some impressions about it, but it is not necessary for me to give them inasmuch as the second point which I have passed upon disposes of the matter now before the Court.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOSEPH J. REYNOLDS *vs.* F. H. SMITH ET AL.

EQUITY NO. 8989.

Decided Monday, June 25, 1888.

Where A is dealing with B in respect of several matters, believing him to be the principal in all of them, and in the course of such dealings A pays moneys to B's agent and after such payments A discovers that B himself was but the agent of C in some of the matters; and that C had not authorized B to employ a sub-agent; and that the moneys so paid by A were misapplied by B and his agent and the several accounts have been mixed and confused, A's remedy is by bill in equity against B for an account; there is no liability on the part of C, in such a case, to A.

Mr. Justice COX delivered the opinion of the Court.

This case has been before the Court several times and has given the Court a good deal of trouble.

Reynolds desired to purchase a house, and his attention was directed to certain houses in course

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of construction at the corner of S and 16th streets, I believe. A sign directed him to the office of Francis H. Smith & Son, and he entered into communication with them. He found in their office, and apparently acting as a member of the firm or as an agent of the firm, Mr. E. J. Sweet, with whom he also had some dealings with reference to these premises. He bought the house at the intersection of corner of the street, and he then desired to have some additions made to it and employed these men, F. H. Smith & Son, as he supposed, to make these additions.

Sometime afterward he bought two other houses, one on 16th street and one on S, connecting with the corner house.

Reynolds claims that he was dealing with F. H. Smith & Son as principals.

After some time, and after a good many payments had been made, and some payments made to E. J. Sweet, he had some sort of an accounting with them, and found that they had failed to give him credit for payments made to Sweet, and thereupon he brought this suit for an account.

In his bill, he claims that he entered into the agreement of purchase, with the defendants, as agents of William R. Hooper, and he claims that he made certain payments for which he was entitled to have credit on his purchase money.

The question was, at once made, whether he had not misconceived his remedy, and whether he ought not to have sued Mr. Hooper, if Smith & Son were agents of Hooper. If he made payments to them on Hooper's account, he was entitled to have credit for them in accounting with Hooper and was entitled to have specific performance by Hooper, and to have credit for those payments received by Smith & Son.

The question over which the controversy turned, principally, at the first investigation, was, whether Sweet was an agent of Smith & Son or a member of the firm so as to bind them by receiving the payments from Reynolds. I say that was the principal matter to which the testimony was directed and over which the controversy turned. We thought the evidence clearly showed that Smith & Son had so held out Sweet, either as a member of the firm or as an agent of theirs, that they were bound by his receipt of those payments from Reynolds, and we directed the case to be referred to the auditor to state an account on this basis, but in that reference we say:

"And all further matters of decree herein are hereby expressly reserved."

The account involves quite a number of items, and it was handed back and forth between the general and special terms, and only recently it was finally settled and all the exceptions to the account were disposed of, and the items finally decided by this Court were sent back to the special term but sent back without any final decree.

When it came up in the Special Term, an application was made for a decree for payment on the balance ascertained by this account to be due from Smith & Son to Reynolds, and that decree was rendered by the Chief Justice, an appeal was taken from that decision and the case brought to this Court again, and here it was heard by Justices Hagner, James and myself.

And here again we are confronted with the same question made at first, viz: The question whether the claim should have been made against Smith & Son, or against Hooper, and whether it is not a case for common law cognizance and one which does not appeal to equity for relief.

The defendants rely, in the first place, upon the plaintiff's own averment, that he entered into this agreement with the defendants, as agents of Hooper, and also upon the written agreement offered in evidence for the sale of these two houses bought, after the first purchase, in which Smith & Son described themselves expressly as agents of Hooper; and there is a great deal of force in the suggestion that this is sufficient proof that the plaintiff had misconceived his remedy and ought to have brought the suit against Hooper.

But when we come to look at the evidence, we find that it makes out quite a different case from the bill.

The first of the purchases was made from Sweet, of the corner house, and he signed himself simply as agent. Reynolds says, and we think he is perfectly justifiable in thinking so, that he took it for granted that Sweet was the agent for Smith & Son, and he never was notified to the contrary until the deed was presented, containing Hooper's name as grantor.

The other two houses be bought from Francis H. Smith & Son, but the agreement offered in evidence, bearing date March, 1882, in which they describe themselves as agents for Hooper, was not reduced to writing and signed by him until more than a year afterwards, that is, in May, 1883, after all the payments had been made and all the transactions completed. During all that time, it does not appear that he had any intimation that Hooper was the principal of these parties. So that, in our judgment, he was perfectly justified—if that is material,—in looking upon F. H. Smith & Son as principals with whom he was dealing in the purchase of the houses. Not only was he justified in doing this, but the evidence further tends to show and satisfy us that he could not look to anybody but F. H. Smith & Son as principals. It is perfectly plain that Sweet was not the agent of Hooper. Hooper says that he saw Sweet about the office of Smith & Son and remonstrated with them for having him around there. So, he was not bound by any payments that were received by Sweet. Smith & Son were. Hooper was not bound by those payments. Therefore Reynolds could not have claimed credit as against Hooper for those payments as made upon account of the two houses sold by him through Smith & Son as agents. If Smith & Son failed to account for those payments to Hooper he was bound to answer for them to Reynolds and Reynolds could not sue anybody else for them. So that, in point of fact, his plain recourse was against Smith & Son to recover for the payments made on acount of the purchase of the houses.

Now, it is true that if this had been all, his remedy would have been at common law, in an action for money had and received.

In his bill he says—and it turns out to be

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true—that there were three accounts, and payments made on one were misapplied to another. In the first place, they were making additions to his house; in the next place, they were collecting rents from his two houses to be applied to the purchase money; and in the next place, they were receiving payments from him directly on account of his purchase money, and he complains that they have so mixed up the accounts that he does not know exactly how he stood with them. It does not seem to us that he could have adequate relief otherwise than by having this account straightened out under the direction of a court of equity, and we think that real justice has about been done by having an account stated by the auditor under the direction of this Court and the decree for the balance.

Therefore we will not disturb the decree as it was rendered in the Special Term.

JOHN BETHELL UHLE, in *The American Law Register*, says: "Reversals in numerous cases, by the courts of last resort of two States, have been unfavorably commented on by the newspapers as showing the great uncertainty of the law. It is, of course, a matter of much time and labor to decide who is in fault, the lower or the superior court, and we can only promise that this matter will be taken up by us and the manner as well as the result of our examination presented to our readers in some form worthy of preservation. The facts, when ascertained, may disclose that want of sufficient qualification for a correct decision, which, amidst the hurry and confusion of a trial or argument, is to be charged upon the inferior court. Certainly any judge who does not endeavor to keep himself informed of the course of recent decisions, or, worse still, who simply uses whatever law is cited to him upon argument, cannot avoid falling into inexcusable blunders and entail delay and expense upon the suitors in his court. Appellate courts, too, at times, suffer from a feverish desire to clear the dockets, overlooking the fact that many cases merely involve the same points of law, which one concise but thorough opinion, without a dissent, will not only decide, but also would cut off appeals in the future. And both classes of courts would command higher respect in the community at large by a greater effort after decisions on broad, general principles, whenever a new question happens to be presented for decision. It is well enough for one court to follow the decisions of a co-ordinate court or its own precedents, but it would add much to the certainty of the law if the underlying principle were always put forward. There should never be a blind following of precedents, when precedents are being made by nearly fifty courts of last resort; there is too much risk of a precedent without sufficient principle."

WHERE train, during night time, was stopped by a snow drift, and some of the passengers, alarmed by approach of snow plow upon adjoining track, apprehending it to be upon main track, upon whistle being sounded by locomotive on their train, left the car and while crossing the adjoining track were injured by the snow plow, the carrier is not liable. Handy *vs.* Sibley, (Ohio), 15 West. Rep., 36.

NEW YORK SUPREME COURT,
GENERAL TERM.

ALFRED COOLEY ET AL, *Appellants*, AGAINST WILLIAM A. CUMMINGS, *Respondent*.

Decided June 21, 1888.

Where a landlord in renting premises, as part of the lease gives the tenant the right to the use of a water closet in another part of the building, and also the right to use another portion of the building to store fuel, &c., and afterwards the landlord puts up a double iron gate of the height of about seven feet across the only passage way leading from the tenant's premises to said water closet—and to the other portion where the fuel is to be stored, and thereby barred the tenant and his employees from going to said closet and to the place where the fuel is stored.

Held, That equity will interpose, by mandatory injunction, to compel the landlord to take down said gate. The grounds for equitable interposition in such a case are twofold. First, the inadequacy of any legal remedy to secure the party in the enjoyment of his right to use the premises. Second, to prevent a multiplicity of suits for damages arising from the daily and the continuous erection of said gate.

This action came on for trial at the February Special Term, Mr. Justice Barrett presiding, who dismissed the complaint upon the ground that the facts above stated did not constitute a cause of action for the equitable intervention of the Court.

The further facts appear in the opinion.

CHAUNCEY SHAFFER and JACOB FROMME for appellant.

J. H. WHITLEGGE for respondent.

BRADY, J.—This action was brought to restrain the defendant from preventing the plaintiff's use of a water closet and croton water, the use of which was secured by lease, and from interfering with them in the use of the fifth floor of the premises, designated in the complaint as a part of the demise covered by the lease.

In addition to this relief the plaintiffs demanded judgment for the damages occasioned by the wrongful acts of the defendant in interfering with the full enjoyment of the premises in the manner designated in the complaint.

When the issue came on for trial at the Special Term the counsel for the defendant demanded a trial by jury. The demand was resisted, and thereupon the plaintiffs, in order to defeat the object of the defendant, elected to waive all claim for damages, and struck out the prayer therefor from the complaint. When that was done the counsel for the defendant moved to dismiss the complaint upon that it did not contain facts calling for the equitable intervention of this Court, and on the further grounds that the facts set out in the complaint did not constitute a cause of action. The motion was granted, and hence this judgment and appeal.

The lease secured to the plaintiffs in express terms the demise particularly stated, and also the right to the use of the third floor of the building of the water closet and Croton water, and the right to use the fifth story of the building to store fuel, &c., and the allegation as to the violation of the right thus secured was that the instrument to which reference has been made was executed with the express understanding, intention and agreement of the parties, that the

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plaintiffs and their employees should continue to use said water closet and Croton water during the continuance of the term, and the extension thereof provided for in the instrument, and should at all times while at work, in the night time as well as in the day time, have free and undisturbed access to and egress from said water closet and Croton water, and to the fifth floor for the necessary use and enjoyment of the same, for the purposes mentioned, and that without such uninterrupted access and egress—at the night time until 11 o'clock—the plaintiffs could not peaceably and quietly have or hold and enjoy the premises or carry on their business without daily and continuous loss, damage and irreparable injury. And further, that the defendants well knowing the premises, and against the will and protestation of the plaintiffs, erected and caused to be constructed and erected, a double iron gate, of the height of seven feet, or thereabouts, across the only passageway leading from the plaintiff's premises to the water closet and Croton water on the third floor, and to the fifth floor, on which gate he put two patent padlocks, the keys of which he kept and retained from the plaintiffs and their employees, and thereby wholly barred therefrom the plaintiffs and their employees, necessarily having occasion several times during the day and night to visit said water closet and Croton water, as well as from the said fifth floor.

The only proposition which it is at all necessary to consider, made on behalf of the respondent in order to sustain his judgment, is that the allegation in reference to the erection of the iron gate avers the interruption of one way leading to the floors above, and this in connection with the proposition that the Court would take judicial notice of the building laws of this State, which requires that means must be provided for reaching the upper floors by means of a stairway, and further, that it is not alleged that the passageway is the only means afforded by which to reach the closets, &c.; and that the plaintiffs make no pretense that they could not get to the closets by stepping outside of the room to the main stairway and by that mode reach the floors above.

The answer to this seems to be simple. The motion to dismiss the complaint was made upon the ground that there were no facts calling for equitable intervention, and that the facts stated did not constitute a cause of action. The allegation is distinctly made that the gate was erected across the only passageway leading from the plaintiff's premises to the water closet and Croton water on the third floor and to the fifth floor, and that the construction of this barrier wholly barred the plaintiffs from visiting the water closet and the Croton water. Assuming that the Court would take judicial notice of the necessary staircase in the building, which is not conceded, the written instrument being a demise might be of such a character as to confer no privilege upon the lessee of the use of the staircases, and might confine him to the use of such means of access as were within its precise terms and limits, and that seems to be the effect of the demise of the lease herein and the allegations. No doubt whatever exists that the demise embraces the use of the Croton water and of the water closets and the fifth story, or of the existence of a passageway leading from the premises of the plaintiff to the water closet and Croton water privilege, or of the construction of the barrier across the passageway preventing its use. Indeed, the erection of the gates proves that access could be had in that way. And these facts, when considered with the further allegation made, namely, that the gate wholly barred the plaintiff from the use of the water closet and the Croton water, it becomes clear that a cause of action was stated.

We are dealing now with the written instrument and allegations of fact connected with it, and we are not permitted, therefore, to wander into the field of presumption and suppositions, but are confined to the limits just mentioned; *non constat* but that on the trial it would appear that the plaintiffs were not, as alleged, confined within the limits expressed and that there were other modes of access to the water closet on the third floor and to the fifth floor which they would have the right to employ. But that would necessarily be a matter of proof to be given upon the trial. Under the allegations as indicated, it would be improper to assume that other modes of access were given plaintiffs which they might have employed without inconvenience. The suggestion, therefore, that the complaint did not contain facts constituting a cause of action is not sustained, nor is the proposition that the complaint does not contain facts calling for equitable intervention a good one.

It certainly is not necessary to cite authorities to show that the continuous interference of a landlord with the rights of his lessee presents a subject for equitable cognizance. But, if it be, reference is made to Williams *vs.* N. Y., &c., R. R. Co., 16 N. Y., 111; Wheelock *vs.* Nunan, 10 Cent. Rep., 514; see, also, Murdock *vs.* Prospect Park R. R. Co., 73 N. Y., 579; Underwood *vs.* Burrows, 7 C. & P., 29; High on Injunctions, sec. 848, 772.

The grounds for equitable interposition in a case like this are, first, the inadequacy of any legal remedy to secure the party in the enjoyment of his right, and, second, to prevent the multiplicity of suits for damages accruing (see Corning *vs.* Troy, &c., Factory, 40 N. Y., 191).

The waiver of damages did not affect the right of the plaintiffs to the equitable interposition of the Court to protect them in the enjoyment of their demise.

No authority has been cited to sustain such a proposition and none has been found.

The judgment should, therefore, be reversed and a new trial granted, with costs to the appellant to abide the event.

UPON an indictment of an officer for failure to turn over public property to his successor it is not necessary for the jury to find whether he had received the money prior to his last appointment or had paid it over to himself as his own successor.—Johnson v. People, S. C. Ill., Jan. 20, 1888; 15 N. E. Rep., 37.

CORPORATE seal is not essential to validity of mortgage executed by private corporation through its proper officers. Leinkauf *vs.* Calman (N. Y.) 12 Cent. Rep., 777.

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Mandamus to Compel Enforcement of Sunday Law.

The Supreme Court of Missouri has held in a recent decision that the police commissioner of St. Louis may be ordered by the court, in a mandamus proceeding, to enforce the law closing the saloons in that State on Sunday, as Judge Pugh, of our Franklin Common Pleas, has held before that it may be done in Ohio. The Missouri court is quoted as saying in their decision:

"In the extensive range of duties thus laid out by the provisions of the charter for the respondents to perform, it seems very plain that elements of discretion enter into the performance of some of them, and whenever this is the cause, the rule is that while the mandatory authority will be used to put pulbic officers in motion, yet it will not dictate the terms in which such discretion is to be exercised.

"In regard to the duties of respondents respecting the observance of Sunday, this element of discretion is very noticeable. They are to 'see that all laws relating to the observance of Sunday are enforced.' How is this purpose to be accomplished?

"It may be done in a variety of ways, either by a direct arrest of the offender, or by closing a saloon if kept open on Sunday, if that is the matter of the offense, or by setting on foot other suitable criminal proceedings, and by warrant or by summons a person may be brought before the court of criminal correction to answer for any misdemeanor."

It will be noticed that the court holds that offenders against the law may be arrested and their saloons closed on sight by the police officers without procuring a warrant, differing in that point from the Supreme Court of Michigan, and probably also the Supreme Court of Ohio, in Eichenlaub v. State, 36 Ohio St., 144. But the provisions of the constitution of Missouri may differ in this respect from those of Michigan and Ohio.—*Ohio Law Journal.*

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

August 13.

11292. Grace Nolen *vs.* William G. Nolen. For divorce. Com. sol., D. W. Glassie.

11293. Robert Montgomery, alleged lunatic. For committee. Com. sol., H. E. Davis.

11294. Maggie Russell *vs.* Charles Russell. For alimony. Com. sols., Birney & Birney.

August 15.

11295. Mamie R. Metcalf *vs.* William L. Metcalf. For divorce. Com. sol., J. J. Johnson.

August 17.

11296. Joseph Prather *vs.* George Koob et al.

11297. Henry Jonson *vs.* William Jonson et al. For reconveyance. Com. sol., J. McD. Carrington.

CIRCUIT COURT.—New Suits at Law.

August 10.

28869. George T. Jones *vs.* James P. Freeman. Note, $600 and attachment. Piffs atty, John N. Oliver.

28870. Smith Pittel *vs.* William E. Sebree et al. $300 rent. Piffs atty, E. H. Thomas.

28871. William W. Golway, administrator, *vs.* The Baltimore and Potomac Railroad Co. Damages, $10,000. Piffs attys, Shellabarger & Wilson and E. F. Arnold.

28872. Millard Metzgar et al. *vs.* George W. Fowler. Balance of account, $171. Piffs atty, F. F. Browning.

28873. Catherine B. Brown, executrix, *vs.* Bushrod Underwood. On foreign judgment, $5,832. Piffs atty, J. W. Foster.

August 13.

28874. Simon Goldstein *vs.* Samuel K. Petingale et al. Note, $175. Piffs atty, J. J. Wilmarth.

28875. Daniel J. MacCarty *vs.* E. D. Clapp. Note, $101.55. Piffs attys, Garnett and Mackall.

28876. Joseph R. Hertford et al. *vs.* The District of Columbia et al. Damages, $10,000. Piffs atty, E. A. Newman.

28877. William H. Hoeke *vs.* John B. Hussey. Note, $350.

August 14.

28878. James Fraser *vs.* George Taylor. Note and account, $318. Piffs atty, C. E. Fraser.

28879. John C. Matthai et al. *vs.* Hensey & Co. Account, $192.54. Piffs attys, Garnett and Mackall.

28880. Jesse Hilles et al. *vs.* George Bogus. Account, $1,237.04. Piffs attys, H. O. & R. Claughton.

28881. John Boyd et al. *vs.* William Monroe et al. Note, $346.58. Piffs attys, Birney & Birney.

28882. Same *vs.* Jackson Yates. Account, $896.86. Piffs attys, Same.

28883. Rudolph Bild *vs.* The Baltimore and Potomac Railroad Co. Damages, $2,500. Piffs attys, Cole & Cole.

August 15.

22884. Joseph Prather *vs.* Robert H. Lusby. Note, $500. Piffs atty, Claughton.

28885. The National Metropolitan Bank of Washington *vs.* W. Scott Towers et al. Note, $450. Piffs atty, N. Wilson.

28886. Same *vs.* Frank B. Conger et al. Note, $600. Piffs atty, Same.

28887. Frank C. Somers *vs.* Levin J. Worlen et al. Account, $1,029.24. Piffs atty, Same.

28888. William R. Truxton *vs.* William H. Beall et al. Note, $102. Piffs attys, Edwards & Barnard.

28889. David Weil et al. *vs.* August Dittrich. Note, $179.04. Piffs atty, Mills Dean.

28890. Thomas B. Falkenburg *vs.* William N. Dalton. Note, $780.89. Piffs atty, Same.

28891. M. C. Paul et al. *vs.* Frank Bessler. Account, $201.22. Piffs attys, Birney & Birney.

28892. F. A. Reichardt et al. *vs.* James A. Maloney. Account, $127.68. Piffs attys, Same.

28893. Charles T. Bagby et al. *vs.* Jackson Yates. Note, $119. Piffs attys, Same.

28894. Leon Seliger et al. *vs.* Joseph Herzog. Account, $313.67. Piffs attys, Garnett and Mackall.

28895. The Merchants' Exchange National Bank of the City of New York *vs.* Sidney A. Jones. Bills of exchange, $98.80. Piffs atty, N. Wilson.

28896. Lewis C. Tallmadge *vs.* The Arlington Brick Machine Co. Account, $391.64. Piffs atty, W. R. Duhamel.

28897. William H. Weimer et al. *vs.* Frank B. Bessler. Account, $173.18. Piffs atty, L. Tobriner.

August 17.

28898. Henry A. Willard *vs.* Joseph A. Gamble. Account rent, $350. Piffs attys, Cole & Cole.

28899. Louis Cassard et al. *vs.* William H. Haycock. Account, $150. Piffs attys, Garnett and Mackall.

August 18.

28900. Robert C. Schenck *vs.* Henry D. Cooke. Note, $1,137.28. Piffs atty, R. R. Perry.

28901. Frank K. Ward *vs.* Richard Rich et al. Damages, $30,000. Piffs attys, Chapin Brown and Mills Dean.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Benigne Pargny Becker**, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of August, 1888.

VICTOR BECKER, Adm'r c. t. a., 801 9th st. n. w.

34 No. 3162. Ad. D. 14.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of P. H. Sheridan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of August, 1888.

IRENE RUCKER SHERIDAN, Ex'x,
MICHAEL V. SHERIDAN, Ex'r,
LINDEN KENT, Ex'r,
1712 N st. n. w.

33

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary English, Guardian, }
v. } Eq. No. 11271.
Mary Elizabeth Quill et al. }

Mary English, Trustee, having reported to the Court that she has sold the property described in these proceedings, to wit: Lot numbered four (4), in square numbered five hundred and eighty-five (585), to Eliza Quill, at private sale, for $2,000.00, it is, thereupon, this 6th day of August, A. D. 1888, ordered, adjudged and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of September, A. D. 1888.

WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
33 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 17th, 1888.

In the case of George J. Gockeler, Executor of Christian G. Gockeler, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.
34 No. 2814. Ad. D. 13. Leon Tobriner, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Harriet Sheckey, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of August, 1888.

34 LUCY M. SHAW, Adm'x, 118 3d st. s. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 20th, 1888

In the case of Thomas I. Gardner, Executor of Griffin Saunders, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
34 No. 2775. Ad. D. 13.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Etta Fetterman, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of August, 1888.

CHARLES B. HARING, Adm'r,
2034 8th st. n. w., City.
34 No. 3193. Ad. D. 14. E. B. Hay, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Robert Moore, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of August, 1888.

34 A. P. LACEY, Adm'r c. t. a., 604 F st n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Thos. C. Homiller et al. }
vs. } No. 10687. Equity Docket 27.
Chas. Homiller et al. }

The Trustees appointed to make sale in this cause having filed their report of sales on the 10th day of August, 1888, it is, on motion of complainants' solicitors, this 13th day of August, 1888, ordered that the said sales be, and the same hereby are ratified and confirmed, unless cause to the contrary thereof be shown on or before the 15th day of September, 1888.

Provided a copy of the foregoing order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before the said 15th day of September, 1888.

WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
34 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Genevieve B. Wimsatt et al. }
vs. } Eq. 11131.
Richard Wimsatt et al. }

The Trustee in this cause having made sale of lot 25, in square 390, to James M. Lanigan, at and for the sum of twenty-three hundred dollars, as directed by the Court. It is, this 20th day of August, 1888, ordered that the said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of September, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before the said 21st day of September, 1888.

By the Court. WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
34 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Richard J. Marshall, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of August, 1888.

JANE V. MARSHALL, Adm'x, 620 E st. n. w.
34 Thos. M. Fields, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 13th, 1888.

In the matter of the Estate of **Lindsay Muse**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William H. A. Wormley and John F. Cook.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3152. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

August 13th, 1888.

In the matter of the Estate of **Elizabeth MacLeod**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Norman S. Bestor and Orson H. Bestor.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3187. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 8th, 1888.

In the case of Frederick W. Pratt, Executor of **Lewis Brown**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2742. Ad. D. 13. A. A. Brooke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 10th, 1888.

In the case of Lewis C. Reinburg, Administrator c. t. a. of **Sarah A. L. Barnes** (nee Martin), deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2756. Ad. D. 13. N. Dumont, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Mary A. Taylor**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of July, 1888.

O. B. WILLCOX, Adm'r,
2022 R st. n. w., Washington City.
32 No. 3142 Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **James Keith Edwards**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 3d day of August, 1888.

SARAH M. EDWARDS, Adm'x.
GEORGE B. EDWARDS, Adm'r.
918 Rhode Island av. n. w.
32 Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 23d day of July, 1888.

William H. Crumpton v. **Maggie Crumpton.** } No. 11209. Eq. Docket 28.

On motion of the plaintiff, by Mr. R. White, his solicitor, it is ordered that the defendant, **Maggie Crumpton**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bonds of matrimony on the grounds of willful desertion of the plaintiff by the defendant for the uninterrupted period of two years and adultery of the said defendant.

By the Court. E. F. BINGHAM, Justice, &c.
A true copy. Test: R. J. MEIGS, Clerk, &c.
30 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

July 30th, 1888.

In the case of Benjamin F. Rittenhouse, Executor of **James J. Kenney**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 24th day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
31 No. 2669. Ad. D. 13. Gordon & Gordon, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

In Re Estate of **Albert B. Baker**, deceased.

Upon consideration of the above petition, it is, by the Court this 20th day of July, A. D. 1888, *ordered* that notice of the above application, in the usual form, to the next of kin of the decedent to show cause, if any, why the same should not be granted, be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before Friday, the 17th day of August, A. D. 1888, to which day at 11 o'clock a. m., the case is hereby continued.

A. B. HAGNER.
A true copy. Test: DORSEY CLAGETT, Register of Wills.
30 Fred. W. Jones, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrick O'Dea et al. v. Mary O'Dea Brown et al. } In Equity No. 11087. Docket 28.

Thomas M. Fields, Trustee, having reported to this Court that he has sold the real estate described in this proceeding, to wit: lot 46 in Laurence O'Dea et al, subdivision of original lot 4, square 719, to T. C. Murray, for $365, it is, this 31st day of July, 1888, ordered that said sale be, and it is hereby, ratified and confirmed, unless cause to the contrary be shown on or before September 1, 1888.

Provided that a copy of this order be published once a week for the three successive weeks next preceding said date in the WASHINGTON LAW REPORTER.

By the Court. E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Lester A. Bartlett, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of August, 1888.
32 CHAS. LYMAN, Adm'r.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Rebecca J. Ashby MacAllister, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 7th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 7th day of August, 1888.
32 JOHN F. MACALLISTER, 921 F st. n. w.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sallie S. Gaither, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of July, 1888.
HENRY E. KALUSOWSKI,
ABERT M. READ,
31 No. 3137 Ad. D. 14 Executors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emeline Clarke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of August, 1888.
JOHN E. LEMMON, Ex'r, 302 N. Y. ave. n. w.
33 No. 3181. Ad. D. 14. D. E. Cahill, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George W. Seaver, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same with the vouchers thereof, to the subscriber, on or before the 8th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of August, 1888.
NELLIE S. SEAVER, Adm'x, 1229 N. Y. ave. n. w.
33 No. 3188. Ad. D. 14.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Guiseppe Mosea, late of Stockton, New Jersey, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of July, 1888.
31 DORSEY CLAGETT, Register of Wills, D. C.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Laura V. Cowling et al. v. Blanche Cowling et al. } No. 10961. Docket, 27.

The Trustees herein, Chapin Brown and Andrew B. Duvall having reported the sale of the real estate in the proceedings mentioned, viz., lot 2 and part of lot 1 in square 252, in City of Washington, D. C., containg 6020½ sq. feet at $4.10 per sq. feet, amounting to $24,684.05 to Walter C. Johnson, it is, by the Court, this 31st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last mentioned date.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Christina Bremer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of August, 1888.
JOHN A. SPROESSER, Ex'r, 205½ F st. n. w.
32 No. 3160. Ad. D. 14. Simon Wolf, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the case of William W. Roberts, Executor of Richard Roberts, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 31st day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
32 No. 2672. Ad. D. 13. McPherson & Carlisle, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the matter of the Estate of Robert Rose, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased has this day been made by Wm. H. Marbury, of Alexandria, Va.

All persons interested are hereby notified to appear in this Court on Friday, the 24th day of August next, at 11 o'clock a. m., to show cause why Letters of Administration d. b. n. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. E. F. BINGHAM, Chief Justice.
Test: DORSEY CLAGETT, Register of Wills
John Goode and Willis B. Smith, Proctors.
32 No. 6516. Old Series.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth H. Mullikin, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 24th day of July, 1888.

BENJAMIN H. STINEMETZ,
JOHN H. OLCOTT,
Executors.

31 No. 3164. Ad. D. 14

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters of Administration on the personal estate of Louisa Harrison Chew, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

ROBERT S. CHEW, Adm'r., Riggs & Co.

31 Wm. G Johnson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Emma Cholet, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of July next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of July, 1888.

MARY E. HUSSEY. Adm'x, 1206 H st. n. w.

31 Frank T. Browning, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of July, 1888.

John L. Maffitt
v.
Emma H. Maffitt et al. } No. 11167. Equity Docket 28.

On motion of the plaintiff, by Mr. A. M. McBlair, his solicitor, it is ordered that the defendants, Mary R. Maffitt, Clarence D. Maffitt and Robert S. Maffitt, Caroline D. Maffitt, Alfred M. Maffitt, Katherine L. Maffitt, John M. Wright, Joshua G. Wright, Mary A. Wright, Thomas H. Wright and Caroline L. Wright, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of lot 19, square 285, in the city of Washington, District of Columbia, the same being No. 1214 K St., N. W.

By the Court. E. F. BINGHAM, Chief Justice, &c.

A true copy. Test: R. J. MEIGS, Clerk, &c.

31 By W. E. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Freeman Grant Thompson
v.
Maud W. Finley et al. } In Equity. No 11179.

Upon consideration of the report of George E. Emmons, trustee, of the sale of all of lot 12 in square numbered 764, except the west eight feet front by the depth thereof, as particularly described in these proceedings, to John M. Norris, at private sale for the sum of seventy-five hundred dollars cash, it is, this 31st day of July, 1888, by the Court, ordered that said sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the first day of September, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before the first day of September, 1888.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

31 By W. E. WILLIAMS, Ass't Clerk.

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The Washington Law Reporter.
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WASHINGTON, D. C. - - - - AUGUST 29, 1888

Giving into Custody.

The variety of circumstances under which mistakes are made in giving persons into custody for some offense, and thereby considerable liability is incurred, make the cases on this subject of great interest. Few persons in the course of their experience have not either given or have been on the point of giving into custody some supposed criminal, and so brought on themselves great difficulties. A mistake which consigns an innocent person to prison, or puts him under the stigma of suspicion during an inquiry before justices or magistrates, when once committed, is not easily passed over, and the means of carrying on actions for damages for this cause, it is believed, are more easily found than in most other cases. One or two recent illustrations of such litigations keep alive one's interest, and suggest the risks as well as point out the protection of those who embark in any prosecution.

The greatest number of actions for false imprisonment and malicious prosecutions arise out of the acts done by managers or servants, by way of protecting the interests of the employer. So many great businesses are now carried on by companies or large capitalists, that the management is necessarily entrusted to a manager, who is supposed to have all the powers incidental to making the management efficient, and these are often so construed as to include the power to take legal steps in defense of the property or in furtherance of the interests of the principals. Hence, great nicety is required in determining whether, in a given situation, a servant or manager has such power impliedly given to him. The point had often before arisen, but perhaps the most noted modern case on this subject was that of Goff *vs.* Great Northern Railway Company, 3 E. & E., 672. In that case, a passenger by railway was given into custody by a superintendent of the company for traveling without a proper ticket. The ground on which the plaintiff, in suing for damages, mainly relied was, that the superintendent at the station was invested with supreme authority as to giving people into custody for defrauding the company. Blackburn, J., in his judgment, held that as from the nature of the case, the question whether a particular passenger should or should not be arrested must be made without delay, and as the case may be of frequent occurrence, it was a reasonable inference to draw from the facts, that the company, in conducting their business, should have on the spot some officer with authority to determine, without the delay attendant on consulting the directors, whether a suspected person should be at once apprehended. Hence, in that case, the company were held to be responsible for the mistake of their officer.

The determination, however, of the point whether a particular servant or officer, or even his principal, has the necessary power to act in giving people into custody is by no means easy. In Poulton *vs.* South Western Railway Company, L. R. 2 Q. B., 534, a passenger had been arrested by a station master for the non-payment of the railway fare for his horse, and the statute, when examined, was held to give no power to detain a passenger except for non-payment of his own fare. The station master had acted in the belief that the law authorized him to arrest, and he was thereby doing his best to protect the interests of the company; yet it was held that it was not within the scope of his authority, and it could not be inferred that the company had authorized him to do an act which, under no circumstances, could be lawful, and which they had no power themselves to do. And in another case, of Edwards *vs.* London and Northwestern Railway Company, L. R. 5 C. P., 445, where a foreman porter, who had the superintendence of the station yard, gave the plaintiff into custody on a charge of stealing timber which was suspected to be the company's property, the court held that there was no evidence of any implied authority arising from the foreman's position to give into custody persons whom he might suspect of having stolen the company's goods. The arrest, therefore, was not in pursuance of any special duty entrusted to the servant to enforce the law or the by-laws; and the Court said there was a distinction between presuming such authority in general and presuming it in each individual case.

Other cases of a like kind may be referred to as illustrating the care requisite in inferring an authority to arrest. In Allen *vs.* London and Southwestern Railway Company, L. R. 6 Q. B., 65, a dispute arose between the passenger and the collecting clerk at the ticket office about some change, and the altercation ended by the clerk giving the plaintiff into custody for attempting to steal money from the till. The Court in discussing the duty and power of the clerk, observed that the clerk might in some cases be justified in giving into custody if an actual robbery had taken place, for this would be the only way of protecting the property; but where, as in this case, the clerk was not actually defending the property, but seemed to be rather trying to punish the passenger for something already done, if he could in such case give into custody, every shopkeeper in London might be made answerable for any similar act done by his shopman when left in charge of the shop. In another case, of a bank agent commencing a criminal prosecution against a customer for stealing a bill of exchange, the Court held that a bank manager had not the duty of prosecuting offenders as a part of the ordinary routine of his office. (Bank of New South Wales *vs.* Owston, 4 App. C., 270.) On the other hand, in Furlong *vs.* South London Tramways Company, 49 J. P., 329, it was held by a judge that the conductor of a tramcar had an implied authority to give into custody any person who evaded payment by tendering false coin.

While difficulties always surround the question, whether or not a servant or agent is authorized to give persons in charge for a particular offense, there are three recent cases of great

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practical importance decided under statutes which come home to everybody. They relate to the reasonable and probable cause which must be shown when defending actions for malicious prosecution. Under the Merchant Shipping Act, 1876, 39 & 40 Vic., c. 80, power is given to the Board of Trade to detain a ship for the purpose of being surveyed if the Board is, on complaint, satisfied that the ship is unsafe. In Thompson *vs.* Farrer, 9 Q. B. D., 372, it appeared that the plaintiff was the owner of a ship intended for the foreign cattle trade, and certain surveyors of the Board of Trade had reported, though somewhat doubtfully, that the ship was unsafe. The Board thereupon ordered the ship to be detained, but when a court of survey afterwards examined it, the ship was found not to be unsafe, and the ship was then released. An action being brought for the detention, the judge at the trial directed the jury to consider whether it was reasonable in the Board to detain the ship, considering that the Board's surveyors had not directly affirmed to be unsafe. The Court of Appeal held that this was a misdirection, and that the proper question to be left to the jury was, whether the facts with regard to the ship, which would have been apparent to a person of ordinary skill on examining and inquiring about her, would have given him reasonable and probable cause to suspect her safely, and so detain her for survey and inquiry.

An important question arose in Hope *vs.* Evered, 17 Q. B. D., 338, as to the carrying out of another statute, the Criminal Law Amendment Act, 1885, 48 & 49 Vic., c. 69. By section 10 of that act, if it appear to a justice of the peace, on information made on oath by a parent, relative or guardian, &c., that there is reasonable cause to suspect that a woman or girl is unlawfully detained for immoral purposes, such justice may issue a warrant to search for such woman or child. Such a warrant had been granted to search the plaintiff's house, on the ground that there was reasonable cause to suspect that the defendant's daughter was detained there by the plaintiff's son for immoral purposes. An action was brought for maliciously, and without probable cause, laying the information, and the judge at the trial held that there was an absence of reasonable and probable cause, and let the question of malice to the jury, who found for the plaintiff. The Court directed judgment to be entered for the defendant, as a mistaken view of the statute had been acted on. Lord Coleridge, C. J., said that this statute cast the duty of issuing the warrant on the magistrate after hearing the facts. If the person who puts the magistrate in motion only states the grounds on which he reasonably suspects that the girl is improperly detained, and if the magistrate agrees with him, and thinks that it has been made to appear to him that a person acting *bona fide* has reasonable cause for his suspicion, then that decision of the magistrate is an answer to such an action as the present. The magistrate had to act judicially. If a person used the act oppressively, without reasonable cause for suspicion, or in a false and fraudulent manner, and thereby obtained the warrant, he might be liable but where the matter is stated fully and fairly to the magistrate, and the lattter concludes that there is reasonable ground for the suspicion then the magistrate's conclusion is an answer to any proceeding. It is not because parents are illogical and unreasonably anxious, and a wrong house occasionally searched, that the salutary operation of this act is to be checked by actions of this description. The act merely provides that there shall be a right to search a house in order to effect what, in the view of Parliament, is a great good.

The recent case of Howard *vs.* Clarke, *ante*, p. 310, is of much practical value to all the numerous classes who have dealings with pawnbrokers, or whose property is occasionally liable to be taken there without authority. The Pawnbrokers Act, 1872, 35 & 36 Vic., c. 93, sec. 34, says: "In any case where, on an article being offered in pawn to a pawnbroker, the latter reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, he may seize and detain the person so offering the article, and deliver such person into the custody of a constable." The plaintiff offered to pawn a gold horseshoe pin, set with seven diamonds, and a ring. The pawnbroker, having received a police notice as to such an article being recently stolen, asked the plaintiff questions, and ended by giving him into custody. It turned out afterwards that the plaintiff gave a correct account of his possession of the gold pin. He brought an action for false imprisonment, and at the trial the judge left the question to the jury whether the defendant had a reasonable suspicion, and the jury found for the plaintiff. The High Court held that the question arising under the statute, whether the defendant reasonably suspected that the pin had been stolen or otherwise illegally or clandestinely obtained, was one for the judge, and he should have held that there was no evidence of want of reasonable suspicion, and hence judgment should have been entered for the defendant. One of the practical points made by the plaintiff was, that the pawnbroker, before giving the plaintiff into custody, ought to have made inquiry into and verified the facts as alleged by plaintiff, but the Court said that the statute could never have been intended to throw all that trouble on the pawnbroker. This result arrived at is obviously a sensible construction of the statute, and an adequate protection to the pawnbroker who desires to facilitate the detection of larceny and other kinds of misappropriation of goods.—*Justice of the Peace.*

WHERE a passenger is pulled from a car against her will by one of the carrier's servants, the carrier is liable for all ill effects which naturally follow the injuries in the condition of health in which the passenger was at the time. Owens *vs.* Kansas City, &c., R. Co., (Mo.), 15 West. Rep., 88.

IT IS NO defense that by reason of latent disease, the injuries were rendered more serious to her than they would have been to a more robust person. Owens *vs.* Kansas City, &c., (Mo.), 15 West. Rep., 88.

HOLDER of accommodation note, as collateral security, can recover against maker only amount secured. Handy *vs.* Sibley, (Ohio), 15 West. Rep., 36.

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Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOSEPH M. BROWN
vs.
GRACE WYGANT, *Executrix.*

Decided June 4, 1888.

1. Under section 5046, R. S. U. S., a full title to all property in the possession of the bankrupt at the time of filing his petition in bankruptcy vests in the assignee the moment he is appointed; hence, a judgment previously obtained by the bankrupt will pass to the assignee under this section.
2. Such assignment will afford the judgment debtor a complete defense to a proceeding by *scire facias* on the part of the bankrupt's testatrix to revive the judgment in her own name against him.
3. And when the judgment debtor shows that, by reason of want of notice of the proceeding by *scire facias*, he has lost his remedy at law, that fact, taken in connection with the practically fraudulent conduct of the testatrix in instituting such proceeding, will give jurisdiction to equity to afford relief upon a bill filed for that purpose.
4. To such a bill the assignee in bankruptcy should be made a party.

Hearing in General Term in the first instance of a demurrer to a bill in equity to enjoin a judgment at law. Demurrer overruled.

The facts are fully stated in the opinion.

ROBERT CHRISTY for complainant.

C. H. ARMES for defendant.

Mr. Chief Justice BINGHAM delivered the opinion of the Court.

The bill in this case avers that on the 9th of February, 1874, one Thomas K. Raymond obtained a judgment against the complainant, on the law side of this Court, for $5,000; that the said Raymond assigned the judgment on the 14th of May, of the same year, to Stephen T. Wygant, the testator of the defendant; that on the 23d day of February, 1878, Wygant was duly adjudged a bankrupt by the District Court of the United States for the Southern District of the State of New York; that Wygant thereafter surrendered his property, including such judgment, the same being expressly mentioned in his schedule of assets; that thereafter Henry T. Godet, of the City of New York, was duly chosen assignee in bankruptcy and qualified as such; that the estate of the said bankrupt has never been settled; that the judgment was the principal asset passing as aforesaid; and that claims largely in excess of the value of the assets were duly proven and allowed against the estate of the bankrupt.

The judgment at law was rendered in cause numbered 11,757, and the record of the same is referred to in the bill of complaint as a part thereof, and the complainant files as an exhibit to the bill a duly authenticated transcript of the bankruptcy proceedings.

The bill charges that the defendant was aware of these facts, but for the purpose of harassing the complainant and to put him to trouble and expense, and in order that complainant might be induced to pay such judgment or a part thereof, and relying upon the complainant's ignorance of such bankruptcy proceedings, on the 12th day of January, 1886, applied by petition in writing, to the justice holding a Special Term of this Court for probate business, and by representing that such judgment was an asset belonging to the estate of said Stephen T. Wygant, who had died in the mean time, and that it was of little or no value, namely, of the value of $100, on the day above mentioned obtained letters testamentary upon giving a nominal bond of $200.

The defendant on the first of February, 1886, caused a suggestion of the death of the said Stephen T. Wygant to be made in the Circuit Court and the issuance of a writ of *scire facias* by the clerk and on the 4th day of February caused an *alias* writ of *scire facias* to be issued to the marshal which was returned with the indorsement "*nihil.*"

On the Third day of March, 1886, the defendant obtained a fiat from the Circuit Court. During all this time the complainant was a resident of the District, but neither of these writs was served upon him, nor any actual notice received by him thereof, nor of the proceedings in probate jurisdiction, nor on the law side until long after they had taken place. As soon as he had received casual notice he applied, by his motion in writing to have the "fiat" set aside, to the Circuit Court, but the Court denied the motion for lack of power to act from lapse of time, but preserved his rights to proceed in equity, and he thereupon began this suit.

The defendant after the proceedings here in the Circuit Court commenced a suit upon this judgment in the Supreme Court of the City of New York on December 28, 1885. The complainant prays for process and injunctions against the enforcement of the judgment and that letters testamentary be declared invalid.

There was a demurrer to the original bill by the defendant which was sustained, and leave given to the complainant to amend by making the assignee in bankruptcy a party and also to amend otherwise as he might be advised.

The bill was subsequently amended by making the assignee a party, by averring that the register in bankruptcy conveyed in writing to the assignee all the personal and real estate of the bankrupt, and by attaching a duly certified copy of the assignment made by the register to the amended bill as an exhibit, and by a further amendment averring that at the time the writs of *scire facias* were issued complainant was a resident of the District of Columbia.

To this bill as amended the defendant interposed a general demurrer, and the same was certified to this Court for hearing. The position of the defendant is that there is no equity in the bill; that it merely seeks to escape payment of a judgment debt. It is claimed that a court of equity does not interfere with judgments at law unless the complainant had a defense at law which he was prevented from availing himself of by fraud or accident. This doctrine, as stated here by counsel for the defendant, may be admitted. The further doctrine claimed by the defendant is, if the return of the marshal under these writs of *scire facias* was fraudulent, yet if the defendant in this suit had no connection with the fraud, no knowledge of it, and did not procure it, the complaint has no standing in a court of equity to set aside a

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mere judgment in the obtaining of which there may have been fraud but with which the plaintiff in the law action was not connected. That is the general doctrine. But in this case we think the facts stated in the bill clearly show fraudulent action upon the part of the defendant. It is averred that the defendant with full knowledge of the facts that the testator had entered into bankruptcy, had been declared and adjudged a bankrupt, had made an assignment to the register—that with full knowledge that this judgment was a part of the schedule made by the register in the bankruptcy proceedings, came to this city and procured herself appointed as testatrix by the Orphan's Court and went into the Circuit Court and by proceedings in that Court by *scire facias* obtained this judgment and obtained the judgment in her name as testatrix. We think those facts and circumstances, if true as alleged in the bill, would show that the defendant in this action is guilty of fraud, and, therefore, the plaintiff has a standing in this Court, so far as that ground is concerned.

But it is claimed that the title of the bankrupt is not shown by the bill in this case, even as amended, to have been devested; that it is not shown to have passed to the assignee, and, therefore, the defendant in this action, as testatrix of the bankrupt, might claim title to this judgment and might have proceedings to revive it in her own name so that she might become possessed of it as testatrix, and in support of this we are referred to Thatcher *vs.* Rockwell, 105 U. S. 467 to Connor *vs.* Long, 104 U. S. 228, and also to Frasier *vs.* Banks, 11 La. Ann., 31.

These cases were all under section 5044 of the Revised Statutes, original section 14 of the Bankrupt Bill. In order to understand this proposition it is necessary to read the two sections of the statute Nos. 5044 and 5046. Section 5044 is as follows:

"As soon as an assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in bankruptcy, and by operation of law shall vest the title to all such property and estate, both real and personal, in the assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of the bankruptcy proceedings.

Now, at first blush this section seems to embrace the same ground, so far as relates to the point of time when the title passes from the bankrupt to the assignee, as is embraced in section 5046 which I will now read:

"All property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patent rights, and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which he had against any person arising from contract or from the unlawful taking or detention, or injury to the property of the bankrupt; and all his rights of redeeming such property or estate; together with the like right, title, power and authority to sell, manage dispose of, sue for, and recover or defend the same, as the bankrupt might have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of the assignee, but subject to the exceptions stated in the preceding section, be at once vested in such assignee."

Under section 5044 it would seem that the property of the bankrupt did not vest in his assignee until an assignment had been made by the register; while by the provision of section 5046 the vesting of the property is made to depend upon the adjudication of bankruptcy and the appointment of the assignee that, as a matter of law and by virtue of the adjudication in bankruptcy and the appointment of the assignee, the property shall absolutely vest in the assignee.

The cases that are referred to by counsel in support of their theory all arose under section 5044. One case relates to a claim against a sheriff to whom the process of attachment had been issued against the bankrupt prior to the filing of the petition in bankruptcy, and who had sold by order of a State court, the property after the filing of the petition in bankruptcy but before the appointment of the assignee, and possibly before the adjudication of bankruptcy, but ignorant of the fact of the bankruptcy, the sheriff had sold property and paid the money over to a creditor and a suit was brought against him in bankruptcy to recover the money. The Court held that he was acting in good faith, under lawful authority and in obedience to a valid right, and having paid the money over in good faith, in ignorance of the proceedings in bankruptcy, he was not liable and the remedy of the assignee was against the sheriff. And in the course of that case, in delivering the opinion, it was said by the Court in construing this section 5044 that the title remains in the bankrupt until the assignment is made by the register to the assignee.

We take it that this section, inasmuch as there is a provision here not in section 5046 that assignments made by the register shall relate back to the commencement of the proceedings, was intended to cover all cases where the title of some sort was in the bankrupt, but the property not in his possession. It does not expressly relate to property affected by attachment proceedings within four months of the period of the commencement of the bankruptcy proceedings which are declared to be void by this section, but it manifestly relates to other contingent matters, equities of redemption as was determined in Hampton *vs.* Rouse, 89 U. S., 22 Wall., 263, where a party became bankrupt and had land, prior to his bankruptcy, sold for taxes, and after going into bankruptcy and before the assignment by the register he redeemed the land. It was held by the Supreme Court of United States that he had sufficient title remaining in him at that time, under section 5044, to entitle him to make the redemption. Section 5046 relates to all property in the possession (as we understand it) of the bankrupt at the time of the filing of his petition in bankruptcy; and as to all such effects upon his being adjudged a bankrupt and the assignee appointed, the latter is invested with a full title to all such property the moment that he is appointed.

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In this case this property being a judgment in the name of the testator—as assignee—owned by him, passed we think, by virtue of section 5046, to the assignee in bankruptcy, and the title to the same was in the assignee in bankruptcy as averred in the bill as amended, at the date these proceedings were commenced by the defendant in the Orphans' Court and in the Circuit Court of this District.

It is hardly necessary that we should consider in this case any of the remaining questions in order to determine the demurrer. There was some discussion by counsel as to the regularity of the proceedings by *scire facias* in the Circuit Court, and as to whether that Court obtained jurisdiction of the defendant, no personal service having been made upon him and he being a resident of this District at the time. But we do not think it is important to determine that question so far as this demurrer is concerned. We think it is clear upon the statement in the bill that this Court has jurisdiction in equity to take cognizance of the complaint made by the plaintiff. We think it is clear, as a matter of construction of these statutes under the facts stated in the bill, that the title to this property passed to the assignee in bankruptcy and was in the assignee in bankruptcy, according to the averments of the bill at the time of the commencement of these proceedings of *scire facias*. That the defendant, therefore, had no right or authority to proceed in the Circuit Court to revive the judgment; that the plaintiff had a complete defense to that action in the Circuit Court which he might have made there had service been made upon him, or had he been otherwise notified, in time, of the pendency of the proceeding in that Court. But, not being notified personally of the proceedings in *scire facias* until (as the Circuit Court determined) it was too late to review them, this, in connection with the fact just mentioned—that the defendant is guilty practically of fraudulent conduct in instituting the proceeding in revivor of the judgment—we think makes the right of the complainant perfect to prosecute this bill in equity.

The demurrer will be overruled and the defendant will, if she desires, be given leave to answer.

SUPREME COURT OF PENNSYLVANIA.

HART
vs.
UNITED STATES TRUST CO. OF NEW YORK.

Decided February 13, 1888.

1. The endorsee of accommodation paper pledged for an antecedent debt may recover against the maker; he cannot set up want of consideration as a defense.
2. The happening of the insolvency of the payee after such note is placed in his hands and before its negotiation, does not *per se* make its negotiation a fraud on the maker.
3. Nor does the mere promise of the payee, made after his insolvency, to return the note to the maker, affect its value in the hands of the endorser.

Error to Court of Common Pleas No. 3, of Philadelphia County.

Opinion by WILLIAMS, J.—This action was brought to recover the amount of two promissory notes. They were given by Hart, payable to the order of Martin Kalbfleish's Sons, and endorsed by them to the Trust Company. The affidavit of defense set out the following facts:

1st. That the notes were without consideration, having been made for the accommodation of the payees.

2d. That before their negotiation the payees, becoming insolvent, suspended payment.

3d. After such suspension the payees promised Hart not to use, but to return the notes.

4th. Notwithstanding such promise, the payees did not return them, but turned them over to the Trust Company as collateral security for an antecedent debt.

The Court below entered judgment against the defendant for want of a sufficient affidavit of defense, and this ruling is here assigned for error.

The general rule as to the liability of the maker of an accommodation note was laid down with clearness in Lord *vs.* The Ocean Bank, 20 Pa., 384. It was there said that "he who chooses to put himself in the front of a negotiable instrument for the benefit of his friend must abide the consequences, and has no more right to complain if his friend accommodates himself by pledging it for an old debt than if he used it in any other way." Proof, therefore, that the bill or note sued on was given as an accommodation will not put the holder on proof of the consideration paid. The legal presumption is that he is a holder for value. This presumption is rebutted by proof that the bill was negotiated after its maturity, and the maker is let into any defense that he might make against the payee. Bowen *vs.* Hastings, 36 Pa., 285; Hoffman *vs.* Foster, 43 Pa., 137. So where the note was procured by fraud, the holder is affected by the fraud unless he shows himself to be a holder for value before maturity, and without notice. So, if one not a party to the bill or note is intrusted with it indorsed in blank for the purpose of getting it discounted for the benefit of the maker and payee, and fraudulently appropriates it to his own use by pledging it as security for an existing debt, the maker may set up the want of consideration and the fraudulent diversion of the note as a defense against the holder. Royer *vs.* Keystone Bank, 83 Pa., 248. Where the note was given as a memorandum and not for negotiation, but the payee fraudulently pledged it as collateral security for an antecedent debt, it was held that the holder, not being a purchaser for value, could not recover. Carpenter *vs.* National Bank, 106 Pa., 170. These exceptions rest on the proposition that fraud in the procurement, or misappropriation of the note as against one not a purchaser for value, is a defense. We are now asked to take one more step in the way of impairing the commercial value of accommodation paper, by holding that the insolvency of the payee happening between the procurement and the negotiation of an accommodation note, gives the maker the right to have his note retired; and that the promise of the payee to deliver it up to him makes the subsequent negotiation of it a fraud on the maker, which he can set up against the holder who has taken it as security for an existing debt of the payee. But one who lends his credit, like one who lends his money, takes the risk of the con-

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tinuing solvency of the borrower. If insolvency happens, it is not easy to see how the lender of his credit is placed in a worse position where it happens before than where it happens after the negotiation of the note. If it be conceded, as perhaps it should be, that where the insolvency happens before the note is negotiated, the maker has the right to recall his loan or credit, yet such right, like the vendee's right of stoppage of goods sold while in transit, must be effectually exercised or it is lost. A request that the note be returned is not enough, nor is the promise of the payee that it will be. It must be taken up. So long as it is left in the hands of the payee it must be presumed in favor of one having no notice to the contrary, that it is left on the same terms on which it was originally given, and his power to use it continues. The duty of the maker in such cases is stated by Chitty, in his work on Bills, at page 457, in these words: "Upon payment or satisfaction of a bill or note, the party making such payment should take care that the instrument be delivered up to him, or his payment indorsed thereon, or he may be liable in an action by a third party who has become the holder of the note before it became due." On page 458 of the same work an illustration is given in which it was held that not taking up an accommodation bill which A had given to B, and which B had pledged to C for the payment of certain acceptances, but permitting them to remain in C's hands after the acceptances were paid, raised a presumption that A had left his acceptance as security for advances subsequently made by C to B.

In the case now before us, Hart lent his note to Kalbfleish's Sons for their accommodation. Whatever conversation he may have had with them after their failure, he did not take back his note, but left it in their possession. They made use of it before its maturity to secure an antecedent debt, and perhaps saved themselves thereby from legal proceedings at the instance of the creditor. The trust company appear to have taken it without notice of the alleged agreement, in the ordinary course of busines, before maturity, as security for an antecedent debt, and we can see no reason why they should not be permitted to collect it. It is better not to extend the exceptions to, or go further in the impairment of, the negotiability of accommodation paper. A note fairly obtained and properly used cannot be defeated in the hands of the holder because the payee had promised to deliver it up, but had not done so, and that is the substance of the defense set up in this case. If the maker had the right to recall it when the payee became insolvent, he did not do so, and he cannot ask us to do after the negotiation of the note what he should have done but failed to do while it was in the hands of the payee.

Judgment affirmed.

CONTRACT by which express messenger is exposed to substantially the same risk as those to which railroad baggagemen are regularly exposed, including that as to negligence of the company's servants, is not unreasonable nor against public policy. Bates *vs.* Old Colony R. Co. (Mass.), 6 New Eng. Rep., 583.

NEW YORK COURT OF APPEALS.

BOLTON *vs.* HATCH.

June, 1888.

A member of the New York Stock Exchange acquires by his admission to membership only such rights as the constitution and by-laws of the association give him, and by ceasing to be a member by the competent judgment of the Governing Committee he ceases to have any further interest in the association except as given by its laws.

The constitution and by-laws bind the members from the fact that they are signed by all the members, and they are conclusive upon each of them in respect to the regulation of the method of transaction of business and of the right to continue a member.

Whatever are the rights acquired by a member and created by his admission to membership, the rules by which that membership is created or dissolved, and which control the affairs of the organization and the relations of members, enter into those rights when created and remain a part of them.

By the constitution it is provided that "in every case where a member is deprived of his membership or declared ineligible for readmission by reason of any offense against or under the laws of exchange, his membership may be disposed of forthwith by the Committee on Admissions." *Held*, That these rules are reasonable and do not contravene any rule of public policy, and having been consented to by the member, deprive him of any interest or rights in the association of which he has ceased to be a member.

Appeal from a judgment of the General Term of the Supreme Court, in the First Department affirming an interlocutory judgment overruling plaintiff's demurrer to the answer.

GRAY, J.—Plaintiff as the assignee of one Des Marets, formerly a member of the New York Stock Exchange, sues to recover the proceeds received by that organization from the sale of the membership, or, as it is sometimes technically termed, the seat of said Des Marets. It is alleged by plaintiff in his complaint that Des Marets, for many years a member of the New York Stock Exchange, in October, 1883, became insolvent, and, under the laws governing that body, was suspended; that subsequently its Governing Committee determined that the failure was caused by doing business in a reckless and unbusiness-like manner, and resolved that Des Marets was ineligible for re-admission, and, in December following the failure, the Stock Exchange, pursuant to its constitution and by-laws, disposed of his membership and seat for $25,000, which sum it retained and refused to pay over to plaintiff, who demanded it as Des Maret's assignee. The complaint also alleges that the New York Stock Exchange is an unincorporated association, organized and located in New York City; that its members have voluntarily established certain rules, conditions, and articles of association or copartnership, which are designated as their constitution and by-laws, which are signed and consented to by the members, and which govern them, their officers and committees, and which control in the conduct of the transactions and concerns of the association, and are binding and obligatory upon the members. The answer of the defendant, after admitting the allegations of the complaint which I have mentioned, sets forth much of the constitution and by-laws of the Exchange, and alleges

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the distribution of the proceeds of the sale of Des Maret's membership to have been made among his creditors in the Exchange, pursuant to their provisions. The plaintiff demurred to this portion of the answer, on the ground that it was insufficient in law upon its face. Although this matter was not stated as a separate defense, *totidem verbis*, yet, as it was affirmative in its nature, and constituted the defense and justification of the association in disposing of Des Maret's membership, and in retaining the proceeds arising from such disposition, we shall not consider the demurrer as improperly interposed, and will dispose of the questions raised by these pleadings. Their decision involves the legal relations to each other of the members composing the association of the New York Stock Exchange, and the extent and validity of the powers reserved by its constitution and by-laws, and conferred upon its officers and committees, in the management of its affairs, and in the control over a member. The New York Stock Exchange is a voluntary association of individuals, united, without a charter, in an organization for the purpose of affording to the members thereof certain facilities for the transaction of their business as brokers in stocks and securities, and a convenient exchange or salesroom for the conduct of such transactions. It cannot be said to be strictly a copartnership, for its objects do not come within the definition of one. A copartnership results from a contract between the parties, by which they agree to combine their property, or labor, or both, in some common enterprise and for a common profit, to be shared in the proportion stated in their agreement. The objects of a voluntary association of brokers do not, however, involve any such combination, or any communion of profits from the business transacted by the members. Like a business club, its principal object is the promotion of the convenience of its members, by furnishing facilities which aid them in doing their business, and are, therefore, of benefit to them. It may be said, however, that the rights of the associates are not substantially different from those of partners, so far as their rights in the property of the association are concerned. The interest of each member in the property of the association is equal, but it is subject to the constitution and by-laws, which are the basis on which is founded the association. They express the contract by which each member has consented to be bound, and which measures his duties, rights and privileges as such. It seems most clear to me that this constitution and the by-laws derive a binding force from the fact that they are signed by all the members, and that they are conclusive upon each of them in respect of the regulations of the mode of transaction of his business, and of his right to continue to be a member. Whatever are the rights acquired by a member, and created by his admission to membership, the rules by which the membership is created or dissolved, and which control the affairs of the organization, and the relations of members, entered into those rights when created, and remained a part of them. In this proposition there is nothing against public policy, for the reason that whatever a member acquires is subject to the self-imposed condition that his title and the rights which accrue from his membership are regulated by and dependent upon the laws adopted by the association, and expressly consented to by him when he joined.

When Des Marets, plaintiff's assignor, joined the Exchange, it may be perfectly true that he acquired property, but it was property given by the act of those who, in giving it, accompanied the gift with conditions which were incident to and a part of the property, and it was in no sense property created by the individual's act. I consider that there is an obvious distinction between property of the individual's own creation, to which he attaches conditions, or in the disposal of which he exerts a direction whereby the claims of others are affected, and property which comes to him subject to conditions which may deprive him of its use or enjoyment. And so here, if the constitution which forms the basis of this association appropriates to his creditors in the association, or to any of its corporate objects, the peculiar property of the member, who, by force of constitutional provisions, has lost his membership, that was an incident entering into his title to it. When membership and the rights belonging to that *status* were conferred upon him, the gift was accompanied by a condition that the rights, of whatever nature, should revert to the association upon the happening of certain events; and he cannot be heard to complain, nor can third persons, claiming to derive under him. He should be held to his contract, which was reasonable, and, when entered into, prejudiced no rights of others, or conflicted with any statutory or common law right. A person acquires by his admission to membership only such rights as the constitution and by-laws of the association give him, and, upon ceasing to be a member, by the competent judgment of the Governing Committee, he ceases to have any further concern or interest in the association, except it is given by its laws. The New York Stock Exchange, by the accumulation of a great fund from a large membership, by the wise and successful management of the members, and by the acquisition of valuable facilities for the transaction of business, has given to membership an important pecuniary value. It is fair to presume that this prosperity and success were, in an important degree, due to the regulations adopted looking to the conduct by a member of his business, and the restraints imposed upon reckless or dishonest methods. Membership may be property, but it is not property in every sense. If it is property, it is incumbered with conditions, when purchased, without which it could not be obtained. (Hyde *vs.* Woods, 94 U. S., 553.) By the constitution of this association the powers of government are vested in a Governing Committee, whose decision, after the trial of a member for offenses under its laws, is final. Standing Committees are appointed by them, and that on insolvencies is charged with the duty of immediately investigating every case of insolvency, and to report whether the same was occasioned by reckless dealing, or by doing business for improper parties. Should the Governing Committee, upon this report, determine that a member's failure was caused by doing business in a reckless and unbusiness-like manner, he may be declared ineligible for read-

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mission by a majority vote of the entire Governing Committee. By section 2 of article 13 of the constitution it is provided that, "in every case where a member is deprived of his membership, or declared ineligible for readmission by the Governing Committee by reason of any offense against or under the laws of the Exchange, his membership may be disposed of forthwith by the Committee on Admissions." The plaintiff appellant contends that, in such a case as this of Des Marets' severance from membership, there was no power under the constitution to distribute the proceeds arising from the sale of his membership, and that, in the absence of some express reservation of the right to dispose of those proceeds they are the property of the member. The vice in plaintiff's argument is in the assumption that a member has any absolute property in his own in such a case. As we have before seen, the rules of the association were an incident to the rights acquired by a person upon admission; and one of those rules was that, for conviction of an offense against or under the laws of the Exchange, a suspended member might be deprived of right to readmission to membership. When expelled, he ceases to have any interest in the association. His privilege to transact his business at that place has been lost. The association may fill the vacancy caused by his expulsion or not, as they please. They cannot be compelled to do so; but if they elect to admit a new member, and can derive from so doing any profit, that is their unquestionable right, with the exercise of which others are not concerned. They may do with their own as they like. As I construe section 2 of article 13, above cited, its effect is that of an express reservation of the right to deprive a member, found guilty of an offense under its provisions, of all rights, interest and claim whatever. The right is given to a member in good standing to propose for admission in his stead some one acceptable to the Committee on admissions, and any profit he derives from his negotiations with the candidate is his. So if a member becomes honestly insolvent, and fails to qualify under the rules for readmission, or if he dies after the claims of the association are discharged, the proceeds may be paid to him or his legal representatives, as the case may be. But in the case of a member who, by misconduct cognizable by the laws of the association, forfeits his right to continue to remain a member, there is reserved by the constitution the right to dispose of his membership. These rules are reasonable, and do not contravene any rule of public policy, and having been consented to by the plaintiff's assignor, deprived him of any interest or rights in the association, of which he had ceased to be a member. These views lead to an affirmance of the judgment appealed from.

PASSENGER unprovided with ticket and refusing to pay fare or leave the train, may be ejected by agents of carrier; but if more violence is used than necessary for that purpose, the carrier and its agents are liable for damages. Jardine *vs.* Cornell, (N. J.), 12 Cent. Rep., 804.

Ancillary Grants of Probate and Letters of Administration.

"The title of executors and administrators to movable property situated in foreign countries, if acknowledged at all," says Mr. Justice Story (Story's Confl. Laws, sec. 512), is acknowledged *ex comitate*, and of course it is subject to be controlled or modified as every nation may think proper with reference to its own institutions, and its own policy, and the rights of its own subjects; the rule being that no nation is under any obligation, excepting such as may be imposed by considerations of international comity, to enforce foreign laws." And in fact, personal property in a state or country, other than that of the domicil, belonging to a deceased person, could not be obtained by the party having the right to it, but for the recognition and acceptance by civilized nations of a principle of international comity expressed in the maxim *mobilia sequntur personam*, which is said to be the only principle of the whole of our law as to domicil when applicable to the succession of personal estate. (Freke *vs.* Carbery, L. R. 16 Eq., 461; Gentilli, L. R. 9 Eq., 541.) And that principle is only given effect to through the medium of a representative appointed by the proper court of the State in which such personal property is situated. (Story's Confl. Laws, sec. 513.) And it is in pursuance of the same principle of international comity that such appointments are made. (In Countess de Vigny, 34 L. J. (N. S.) P. M. & A., 59.)

Hence the general rule, as stated by Sir J. P. Wilde—that where a person dies domiciled in a foreign country and the court of that country invests anybody, no matter whom, with the right to administer the estate, the Court of Probate ought to follow the grant simply because it is the grant of a foreign court, without investigating the grounds on which it was made, and without reference to the principle on which grants are made in England. (Smith, 16 W. R., 1,130 (1858).)

And that is deemed the principal or primary administration which is granted in the country of the domicil, for the final distribution of the effects among the heirs or distributees is to be decided by the law of the domicil: and any other administration which is granted in any other country is treated as in its nature ancillary, merely, and is generally surbordinate to the original administration. Story's Confl. Laws, sec. 518.

In the leading case, Enohin *vs.* Wylie, (10 H. L. C., 8, (1862).) Lord Chancellor Westbury puts the case thus:—"A man makes a will according to the law of the country in which he is domiciled; he has some personal property in a foreign country, that foreign country has the duty of granting an ancillary administration which ought to be granted to those entitled by the law of the country of the domicil." In that case the domicil was Russia; the testator had personal property in England as well as in Russia, and the will which contained a general appointment of executors had been proved by them in the proper court in Russia. But it appeared that letters of administration had been issued by the Court of Probate in England as to the property in England as in the case of an intestacy; and his

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Lordship, in delivering the judgment of the House of Lords, said (p. 14) that upon the Probate Court being satisfied of the facts, it was the duty of that Court at once to revoke the letters of administration which had been granted, and to clothe the Russian executors with ancillary letters probate to enable them to get possession of that personal estate which in fact, though not in law, was situate in England.

In a later case (Hill, L. R. 2 P. & D., 90, (1870), in which a grant of letters probate had been made in the State of Delaware. and the party who obtained it applied to the Court of Probate in England for a grant to enable him to get possession of the assets of the deceased in England, Lord Penzance said: "I have before acted on the general principle that where the court of the country of the domicil of the deceased makes a grant to a party who then comes to this Court, and satisfies it that by the proper authority of his own country he has been authorized to administer the estate of the deceased, I ought, without further consideration, to grant power to that person to administer the English assets." The grant made in the country of the domicil is acknowledged as the basis of the grant in England.

In each of the cases mentioned a will had been made, and executors appointed. But in cases of intestacy, also, Probate Courts act upon the general rule above referred to in making the ancillary grant to the person who has obtained the primary grant (Weaver, 36 L. J., P. & M., 41 (1865); Beggia, 1 Add., 340; Gentilli, sup.; David Rogerson, 2 Curt., 656; 2 Kent's Com.; 429, *n* (6); Wharton's Confl. Laws, sec. 608.), unless by so doing the court would be acting in contradiction to the law of the country in which it is established. (H. R. H., the Duchess of Orleans, 1 Sw. & Tr., 253; Weaver, Sup.; but see *Re* Countess da Cunha, 1 Hagg., 237.)

An exception to the rule referred to arises where the primary administration has been granted to a creditor. In that case the court in making the ancillery grant does not necessarily commit the administration to the party appointed by the court of the domicil, as the appointment of a creditor is not of a right, but one resting in the discretion of the judge who appoints. (*In Re* O'Brien, 3 O. R., 329; *Re* Williams, 5 Demarest (N. Y. Sur.), 292.)

Ancillary grants are made not only in aid of probates and administrations taken out in foreign countries, strictly so called, but also in aid of grants made in different provinces or states of the same general government. (Earl, L. R. 1 P. & D., 450; Throop's N. Y. Code, secs. 2695-6; Story's Confl. Laws, 7th edition, 513, *et seq.*) Although as between England and the colonies or plantations before the abolition of the jurisdiction of the Ecclesiastical Courts as to probates and administrations, ancillary grants would not be necessary in the plantations if the primary grant were a prerogative grant. In 1707, Attorney General Sir E. Northey advised the Lords Commissioners for trade in the plantations (Forsyth's Constitutional Law, 43) that where a man died intestate in the plantations, having personal estate there, and also any personal estate, or debts owing, in England, the right of granting administration belonged to the Archbishop of Canterbury, and if an administrator were appointed in the plantation, which might be, that administrator would be accountable to the administrator in England; and that where letters of administration arrived at the plantation under the seal of the Prerogative Court of Canterbury they were to be allowed there and the authority of the administration granted in the plantation from that time ceased. And in 1842, Tindal, C. J., considered it well established that in the case of a British subject dying intestate in the colonies, or in a foreign, country, a prerogative administration extended to all the personal property of the intestate wherever situate at the time of his death. (Whyte *vs.* Rose, 3 Q. B., 493, 507.) The principle of all prerogative probates appears to have been the saving of the necessity of two grants. (Scarth *vs.* The Bishop of London, 1 Hagg., 625 at p. 633.)

Notwithstanding the extended operation of prerogative grants referred to, it has been the practice in this Province since the establishment of courts having probate jurisdiction to make ancillary grants upon the principles and according to the practice above stated as prevailing in England.

The grants of the former Court of Probate for Upper Canada upon which was conferred a jurisdiction over the whole province appears to have been on the same principle; the Act providing that—"when a testator or intestate died possessed of goods, chattles or credits to the amount of £5, in any district other than that in which he resided at the time of his decease, or possessed of goods to the value of £5 in two or more several districts within the Province, the probate of such will or letters of administration of the goods and effects of such person should be granted by the Court of Probate only and not by any Surrogate Court;" (Nickall's Stats., U. C. (1831), c. 8, sec. 3) the jurisdiction thus resembling that of the Prerogative Court of Canterbury to which the granting of probates and administrations, when there were *bona notabilia* in two or more dioceses, appertained, to the exclusion of diocesan or other local jurisdiction. (Scarth *vs.* Bishop of London, sup., and note to p. 637 *Ib.*, cit. 92d Cannon, 1, Williams on Ex., Ed. of 1832, p. 167.) By enabling Surrogate Courts to issue probates and administrations which should have effect throughout the province, and abolishing the Court of Probate, which was done by the Surrogate Courts Act, 1858, the principle before alluded to was preserved and the procedure simplified.

In certain States of the United States, which for certain purposes are considered foreign to each other, express statutory provision is made as to ancillary grants not only of probates and letters of administration, but also of letters of guardianship of infants: (Throop's N. Y. Code, (1886), sec. 2695-6; Smith's Probate Prac., (Mass.) 66; Story's Confl. Laws, 7th Ed. sec. 513 *et seq.*) the procedure being similar as to evidence required, and the nature of the grant to that heretofore existing in this Province, and therefore more elaborate than that provided by the Imperial Statutes of 1857-8, which have been followed by the Ontario Legislature in its recent Act on the subject.

In the years just mentioned the law in Eng-

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land was amended for the purpose of making English grants operative in Ireland, and Irish grants operative in England, with similar provisions as to Scotch Confirmation. This was accomplished by "The Probate and Letters of Administration Act (*Ireland*), 1857," 21 & 22 Vic., c. 79, sec. 95, Imp.; and "An Act to amend the Law relating to the Confirmation of Executors in Scotland, and to extend over all parts of the United Kingdom the effect of such Confirmation, and of Grants of Probate and Administration," (1858.) Section 95 of the first named act is as follows:—

"When any probate or letters of administration to be granted by the Court of Probate in Ireland shall be produced to, and a copy thereof deposited with the Registrar of the Court of Probate in England, such probate or letters of administration shall be sealed with the seal of the last mentioned court, and being duly stamped shall be of the like force and effect and have the same operation in England as if it had been originally granted by the Court of Probate in England." Section 12 of the secondly named act is that "when any confirmation of the executor of a person who shall * * * be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in England, shall be produced in the principal Court of Probate in England, and a copy thereof deposited with the Registrar together with a certified copy of the interlocutor of the commissary finding that such person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said court and returned to the person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate." And an affidavit and inventory are to be filed stating the whole of the personal and movable estate and effects in the United Kingdom.

The provision of the first named act (sec. 95), substituting sealing of the primary grant for the uncillary grant formerly in use has been adopted by the Legislature of this Province in its act of last session, entitled "An Act respecting Ancillary Probates and Letters of Administration," the first section of which provides that, "Where any Probate or Letters of Administration, or other legal document purporting to be of the same nature, granted by a court of competent jurisdiction in the Unlted Kingdom, or in any Province of the Dominion, or in any other British Province, is produced to, and a copy thereof deposited with the Registrar of any Surrogate Court of this Province, and the prescribed fees are paid to the said Surrogate Court as on a grant of Probate or Administration, the Probate, or Letters of Administration, or other document aforesaid, shall be sealed with the seal of the Surrogate Court, and shall thereupon be of the like force and effect in Ontario, as respects personal estate only, as if the same had been originally granted by the said Surrogate Court of this Province, and shall (so far as regards this Province) be subject to any orders of the last mentioned Court, or on appeal therefrom, as if the Probate or Letters of Administration had beed granted thereby." There is also a provision as to security in cases of administration of the estate of intestates, where letters are presented for resealing. And the act is not to go into force as relates to the United Kingdom or any Province other than the Provinces and Territories of the Dominion, until a day to be named by proclamation.—*Canadian Law Times.*

Insanity as a Legal Defense.

Taylor, an author of high repute, in his work on "Medical Jurisprudence," edition of 1873, at page 479 of volume 2, says: "The intellectual disturbance may be sometimes difficult of detection; but in every case of true insanity it is more or less present, and it would be a highly dangerous practice to pronounce a person insane when some evidence of its existence was not forthcoming. The law does not recognize moral insanity as an independent state; hence, however perverted the affections, moral feelings or sentiments may be, a medical jurist must always look for some indications of disturbed reason. Medically speaking, there are, according to Dr. Prichard, two forms of insanity, moral and intellectual; but in law there is only one—that which affects the mind. Moral insanity is not admitted as a bar to responsibility for civil or criminal acts, except in so far as may be accompanied by intellectual disturbance." And in speaking of moral or emotional insanity as a defense for the commission of crime, the late Mr. Justice Curtis, in United States v. McClue, 1 Curt., 1, said: "It is an important as well as a deeply interesting study, and it finds its place in that science which ministers to disease of the mind * * * But the law is not a medical nor a metaphysical science. Its search is after those practical rules which may be administered without inhumanity for the security of civil society, by protecting it from crime; and, therefore, it inquires not into the peculiar constitution of mind of the accused, or what weakness or even disorders he was afflicted with, but solely whether he was capable of having, and did have, a criminal intent. If he had, the law punishes him; if not, it holds him dispunishable."

WHERE passenger is injured by leaving car in attempt to escape from apparent danger, it must appear that that which produced the alarm was the carrier's negligence. Chicago &c., R. Co., *vs.* Felton (Ill.) 15 West. Rep., 41. Handy *vs.* Sibley, (Ohio), 15 West. Rep., 36.

PASSENGER has the burden of proving this negligence, and it is not done by proof that a peculiar signal, which was a proper one, was given by the engine, which caused or aggravated his alarm. Handy *vs.* Sibley, (Ohio), 15 West. Rep., 36.

A, AGAINST whom a judgment had been rendered as surety for B, filed a petition in a suit by B's creditors to subject B's lands to their claims, asking that a certain tract, upon which he had a junior incumbrance, be sold last, but his petition was rejected: *Held*, that such petition did not suspend the running of the Statute of Limitations, since A could have sued out an execution at any time against B.—Dabney *vs.* Shelton, S. C. App. Va., September, 1887.

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THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

August 18.

11298. Virginia H. Riordan vs. John B. Riordan. Com. sol., C. Carrington,

11299. Amalanah Boice vs. John Boice. For divorce. Com. sol., E. B. Hay.

11300. Richard A. Frisby vs. Bessie Frisby. For divorce. Com. sol., C. Storrs.

August 20.

11301. Harry B. Fitzhugh vs. Richard A. Scaggs and wife et al. For an account of rent and profits. Com. sol., F. H. Mackey.

11302. Lucy F. McKenna, guardian, et al. vs. Martha M. McKenna et al. For sale by trustee to be appointed. Com. sols., McCalmont and Beach.

August 22.

11303. John A. Baker vs. The Washington Market Co. et al. Injunction. Com. sol., Leigh Robinson.

August 23.

11304. David D. Lomax et al. vs. Mary A. Downman et al. For conveyance.

11305. John R. Kraft vs. Jeremiah Connor. To dissolve partnership. Com. sol., Chapin Brown.

August 25.

11306. William W. Grant et al. vs. Charles F. Grant et al. To sell to make partition. Com. sol., C. A. Elliot.

11307. Francis A. Cleavelaux vs. Francis L. Shipley et al. To reform deed and for proper conveyance. Com. sol., Ferd. Schmidt.

August 28.

11308. Annie L. Graether vs. Leonard F. Graether. For separate allowance. Com. sol., B. Lockwood.

CIRCUIT COURT.—New Suits at Law.

August 20.

28902. Elizabeth Pierce et al. vs. John T. Vinson. Ejectment. Piffs attys, Worthington & Heald.

28903. James M. Terrill vs. The Colored Catholic Male Benevolent Society. Mandamus. Piffs attys, Smith and Birney.

28904. Harwood Manufacturing and Storage Co. vs. H. Murray White. Bill of exchange, $349.98. Piffs attys, Worthington & Heald.

August 21.

28905. Smith Pettit et al. vs. William E. Sebree. Note, &c., $241.85. Piffs atty, E. H. Thomas.

28906. Same vs. Theodore H. Burdett et al. Note, $400. Piffs atty, Same.

August 22.

28907. The United States, *ex rel.* James R. Saunders, vs. Commissioners of the District of Columbia. Mandamus. Piffs atty, C. A. Elliot.

28908. Hillman A. Hall vs. William G. Widmayer et al. Note, $225.45. Piffs atty, H. B. Moulton.

28909. John Fitzmorris vs. John E. Haines. Judgment of Justice Strider, $40.23.

28910. John B. Fearson et al. vs. Sarah A. Harrington. Notes, &c., $222. Piffs atty, E. H. Thomas.

August 23.

28911. George W. Cochran et al. vs. William T. Rowe. Judgment.

28912. Frank Ehlen vs. John C. Parcel et al, Notes, $2,000. Piffs atty, J. A. Smith.

28913. William A. Matthewson, for the use of R. Coyle, vs. Walter B. Dobson. Account, $394.44. Piffs atty, R. Coyle.

28914. Alexander V. Grimes vs. Moses Madry. Replevin. Piffs attys, Edwards & Barnard.

28915. Elizabeth Pierce et al. vs. Sophia Wille. Ejectment. Piffs atty, Worthington & Heald.

28916. William M. Buckman vs. Thomas S. Queen. Judgment of Justice Strider, $33.60.

28917 George A. Hurd et al. vs. Albert T. Johnston. Account, $146.34. Piffs attys, McCalmont and Beach.

August 24.

28918. Elizabeth Pierce et al. vs. Ulysses G. Chipman. Ejectment. Piffs attys, Worthington & Heald.

28919. Same vs. John B. Schneider et al. Ejectment. Piffs attys, Same.

28920. Same vs. William Vincent. Ejectment. Piffs attys, Same.

28921. Same vs. Henry Dogins. Ejectment. Piffs attys, Same.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of **Alexander A. Greer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1888.

LUCINDA H. GREER, Adm'x, 1113 10th st. n. w.

35 No. 3189. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Albert B. Baker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1888.

SIMON D. NEWCOMB, Ex'r, 926 N. C. ave., City.

35 No. 3166. Ad. D. 14. F. W. Jones, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Charles Homilier**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of August, 1888.

JAMES H. TAYLOR, Ex'r, 613 15th st.

35 No. 3169. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Cuthbert Walker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1888.

ISABELLA WALKER, Ex'x, 2523 K st.

35 No. 3129. Ad. D. 14. Matthews & Matthews, Proctors.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **James Keith Edwards**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 3d day of August, 1888.

SARAH M. EDWARDS, Adm'x.
GEORGE B. EDWARDS, Adm'r.
918 Rhode Island av. n. w.

32 Edwards & Barnard, Proctors.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Patrick O'Dea et al. v. Mary O'Dea Brown et al. } In Equity No. 11087. Docket 28.

Thomas M. Fields, Trustee, having reported to this Court that he has sold the real estate described in this proceeding, to wit: lot 46 in Laurence O'Dea et al, subdivision of original lot 4, square 719, to T. C. Murray, for $365, it is, this 31st day of July, 1888, ordered that said sale be, and it is hereby, ratified and confirmed, unless cause to the contrary be shown on or before September 1, 1888.

Provided that a copy of this order be published once a week for the three successive weeks next preceding said date in the WASHINGTON LAW REPORTER.

By the Court. E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
32 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Laura V. Cowling et al. v. Blanche Cowling et al. } No. 10961. Docket 27.

The Trustees herein, Chapin Brown and Andrew B. Duvall, having reported the sale of the real estate in the proceedings mentioned, viz., lot 2 and part of lot 1 in square 252, in City of Washington, D. C., contaning 6020½ sq. feet at $4.10 per sq. feet, amounting to $24,684.05 to Walter C. Johnson, it is, by the Court, this 31st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last mentioned date.

E. F. BINGHAM, Chief Justice.
A true copy. Test: R. J. MEIGS, Clerk.
32 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 3d, 1888.

In the case of William W. Roberts, Executor of Richard Roberts, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 31st day of August, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
32 No. 2672. Ad. D. 13. McPherson & Carlisle, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Emeline Clarke, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 3d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 3d day of August, 1888.

JOHN E. LEMMON, Ex'r, 302 N. Y. ave. n. w.
33 No. 3181. Ad. D. 14. D. E. Cahill, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of George W. Seaver, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of August, 1888.

NELLIE S. SEAVER, Adm'x, 1229 N. Y. ave. n. w.
33 No. 3188. Ad. D. 14.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Benigne Pargny Becker, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of August, 1888.

VICTOR BECKER, Adm'r c. t. a., 801 9th st. n. w.
34 No. 3162. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Niland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 20th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 20th day of August, 1888.

HANNAH NILAND,
LAURENCE CONNOR,
PETER McCARTNEY,
Executors.

35 No. 3196. Ad. D. 14. Neal T. Murray, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William J. Peyton, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of August, 1888.

PAULINE L. PEYTON,
JOSEPH I. PEYTON,
Executors.

35 No. 3195. Ad. D. 14. C. C. Lancaster, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 24th, 1888.

In the case of Samuel E. Arnold, Administrator of Charles Clark, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
35 No. 2821. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 27th, 1888.

In the case of Emily M. Farless, Executrix of Anna J. G. Mirick, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **P. H. Sheridan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of August, 1888.

IRENE RUCKER SHERIDAN, Ex'x,
MICHAEL V. SHERIDAN, Ex'r,
LINDEN KENT, Ex'r,
1712 N st. n. w.

33

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary English, Guardian, v. **Mary Elizabeth Quill et al.** } Eq. No. 11271.

Mary English, Trustee, having reported to the Court that she has sold the property described in these proceedings, to wit: Lot numbered four (4), in square numbered five hundred and eighty-five (585), to Eliza Quill, at private sale, for $2,000.00, it is, thereupon, this 6th day of August, A. D. 1888, ordered, adjudged and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 6th day of September, A. D. 1888.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.
33 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 17th, 1888.

In the case of George J. Gockeler, Executor of **Christian G. Gockeler**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.
34 No. 2814. Ad. D. 13. Leon Tobriner, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Harriet Shockey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of August, 1888.

34 LUCY M. SHAW, Adm'x, 118 3d st. s. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 20th, 1888

In the case of Thomas I. Gardner, Executor of **Griffin Saunders**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
34 No. 2775. Ad. D. 13.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Etta Fetterman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of August, 1888.

CHARLES B. HARING, Adm'r,
2034 8th st. n. w., City.

34 No. 3193. Ad. D. 14. E. B. Hay, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Robert Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of August, 1888.

34 A. P. LACEY, Adm'r c. t. a., 604 F st n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Thos. C. Homiller et al. *vs.* **Chas. Homiller et al.** } No. 10687. Equity Docket 27.

The Trustees appointed to make sale in this cause having filed their report of sales on the 10th day of August, 1888, it is, on motion of complainants' solicitors, this 13th day of August, 1888, ordered that the said sales be, and the same hereby are ratified and confirmed, unless cause to the contrary thereof be shown on or before the 15th day of September, 1888.

Provided a copy of the foregoing order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before the said 15th day of September, 1888.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.
34 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Genevieve B. Wimsatt et al. *vs.* **Richard Wimsatt et al.** } Eq. 11131.

The Trustee in this cause having made sale of lot 25, in square 390, to James M. Lanigan, at and for the sum of twenty-three hundred dollars, as directed by the Court. It is, this 20th day of August, 1888, ordered that the said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of September, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before the said 21st day of September, 1888.

By the Court. WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.
34 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard J. Marshall**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of August, 1888.

JANE V. MARSHALL, Adm'x, 620 E st. n. w.

34 Thos. M. Fields, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 13th, 1888.

In the matter of the Estate of **Lindsay Muse**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William H. A. Wormley and John F. Cook.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3152. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

August 13th, 1888.

In the matter of the Estate of **Elizabeth MacLeod**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Norman S. Bestor and Orson H. Bestor.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3187. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 8th, 1888.

In the case of Frederick W. Pratt, Executor of **Lewis Brown**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2742. Ad. D. 13. A. A. Brooke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 10th, 1888.

In the case of Lewis C. Reinburg, Administrator c. t. a. of **Sarah A. L. Barnes** (nee Martin), deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2756. Ad. D. 13. N. Dumont, Proctor.

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U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
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Liability of Hosts to the Stranger within their Gates.

The case of Tolhausen *vs.* Davies, 57 Law J. Rep. Q. B., 363, reported in the July number of the Law Journal Reports, is interesting not so much for the law it lays down, which appears to be tolerably clear and simple, as for its subject matter, dear to every Englishman's heart—that is, horses, their ways and habits. No reader, however recluse and practically ignorant of the subject, but gladly will take the proffered hand of Mr. Justice Smith, with Mr. Justice Matthew concurring, as he guides us to the Cheshire farmstead where took place the events so racily described that no man who has ever left London will not recognize them as true to nature, and with such aptness and common sense fitted to the law that it requires a captious lawyer to pick holes in the process. A want has been recently felt in the organization of the trial of actions which, singularly enough, appears to have been overlooked both by the bar and the solicitors who recently reported on this topic in conference—namely, that the principal *reddendo singula singulis* should be applied to judges and causes, and each cause tried before the judge who knows most of the subject. Without confessing too much sympathy for this feeling, it may be allowed that when by rare accident the judge and his subject are congenial the judgment is all the better reading.

The action in question arose out of an afternoon call made by Mrs. Tolhausen on her friend Mrs. Davies at her husband's farmhouse. Mrs. Davies was not at home in the actual, not the conventional, sense, and Mrs. Tolhausen, who really wished to see her, took a seat to await her return. Suddenly the maidservant, who remained in the room to make company, and who had either been looking out of the window or heard an unusual noise, shouted out that some one's horse and cart were galloping up the road. Anything to relieve the monotony of waiting was welcome, and the visitor ran out of the back door in the direction of the noise, through the farmyard and down the road from the farmhouse, where she was unfortunately knocked down by her host's horse and cart on a headlong course to his stable. This was an act requiring explanation as to the part of the horse, which was partly supplied by the fact that the carter, after unloading a load of dung not far from home, had thrown his fork into the cart and uttered what Mr. Justice Smith calls the vernacular "Gee-up" and so started the horse. In the County Court a verdict for £300 damages was given in favor of Mrs. Tolhausen. Every respect was shown by the learned judges to this verdict so far as it could be considered a question of fact, but did not prevent the question being decided whether there was any evidence of negligence or liability disclosed by the facts. On the first point Mr. Justice Smith lays down that. "If the plaintiff's case had rested solely upon alleged negligence in not having the horse in the dung-cart led by a boy, coupled with the throwing in of the fork and the use to the horse of the common vernacular 'Gee-up,' I should have hesitated before I held that there was any evidence of any want of due care on the defendant's servant's part, for it is common knowledge to any one who knows anything of agricultural affairs that such is the universal and ordinarily accepted way of conducting such matters; and the mere fact that a horse did what hundreds, I may say thousands, of others almost daily at certain periods of the year do under similar circumstances, would not in my judgment lead me to the conclusion that the defendant's servant had been guilty of any omission of due care. Everyone will agree that throwing in the fork and encouraging the horse is a very natural way of starting him home, and if he had been an ordinary cart-horse no carter would have expected him to run away; but the horse was admitted by his master to be more than a cart-horse, and to be part van-horse with a little blood in him. On the strength of this fact Mr. Justice Smith did not see his way to say that there was absolutely no evidence of negligence, as a horse of that character hardly required to be encouraged to start home with an empty cart, in spite of the lamb-like nature attributed to him by his master. The choice made by the learned judge in favor of deciding the question of liability makes the decision the more important. He first accepts the view of Tebbutt *vs.* The Bristol and Exeter Railway Company, 40 Law J. Rep., Q. B., 78, that the master would be responsible for the act if he would be responsible if he had done the act himself, but points out that the defendant could not reasonably expect that the injured lady would be visiting his wife. This seems a weak point in the judge's reasoning. No doubt he would not expect Mrs. Tolhausen in particular to be calling on his wife at that moment, but the hour between four and five is a very likely time for visits to be made, especially when the prospect often includes the freshest of cream. Farmers' wives do not have days 'at home,' but the liability of the husband could hardly depend on the question whether the guest was injured on a day when his wife received or not. The ground taken is hardly improved by the assertion of the absolute right of the proprietor to leave his horse unattended on his own land, and the distinction is fine that if this very horse, started in this very way, had run over Mrs. Tolhausen on the high road while she was going to pay her visit at the farmhouse she would have been compensated, while as she was actually visiting inside the gate she is not entitled to recover."

The reasons given by the County Court judge for his finding are not reported, neither is it shown why the conduct of Mrs. Tolhausen herself was not a sufficient answer to the action. Her place as visitor was in the parlor, not in the yard, and she went out to go by the front door. If out of curiosity or panic, hearing the

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horse come galloping along, she ran out through the yard into the drive, did she not rather run against the horse than it against her? Moreover, there is the general principle against the plaintiff laid down and binding in Southcote *vs.* Stanley, 25 Law J. Rep. Exch., 339, in which the Court of Exchequer, consisting of Chief Baron Pollock and Barons Alderson and Bramwell, lay down that the guest is like one of the family of the host, who is not responsible for accidents through negligence of himself or his servants towards the guest in any case unless he does something in the nature of setting a trap. Chief Baron Pollock forcibly asks whether the host is to pay for a silk dress spoilt through a clumsy footman upsetting the soup. Either of these grounds would have appeared much safer, but now-a-days the principles of liability for negligence have become somewhat vague even in the highest places of the law.—*The Law Journal.*

MARYLAND COURT OF APPEALS.

BARTLETT *vs.* CHRISTHILF.

Decided June 13; 1888.

1. Statements made in any of the pleadings or proceedings in a cause before a court having jurisdiction of the subject are absolutely privileged, even though made maliciously and falsely.
2. A receiver in a chancery suit filed a petition containing false and malicious charges against his co-receiver. In a suit for slander by the co-receiver it is held that an action will not lie.
3. A malicious abuse of legal process consists in the malicious misuse or misapplication of that process to accomplish some purpose not warranted or commanded by the writ, and may consist either of the arrest of the person or the seizure of property, but not of an injury to business or name.
4. A declaration charged the defendant with malicious abuse of legal process in filing a slanderous petition against the plaintiff and with procuring an order thereon. As this order was not executed in an illegal manner the action will not lie. The wrongful manner of obtaining the order is not actionable.

Appeal from the Superior Court of Baltimore City.

MCSHERRY, J.—In a proceeding instituted in the Circuit Court of Baltimore City by John D. Muir, plaintiff, against William P. Whiting and J. Kemp Bartlett, Jr., defendants, the said Bartlett and one Christhilf, the appellee, were appointed receivers. Some weeks thereafter Christhilf filed a petition in that case, alleging, in substance, that Bartlett was unlawfully and wrongfully withholding a portion of the assets from the receivers; that he was obstructing the collection of the assets of the firm; acting in contempt of the authority of the Circuit Court; and that he had embezzled some of the money belonging to the trust. Upon this petition an order was passed requiring Bartlett to show cause why he should not be attached for contempt and removed from his office of receiver. Bartlett answered the petition, but, before any hearing was had upon it, the case of Muir against Whiting & Co. was settled, and dismissed by order of Muir, the plaintiff, and Whiting and Bartlett, the defendants. Thereupon Bartlett instituted suit against Christhilf, in the Superior Court of Baltimore City for an alleged libel, and a malicious abuse of the process of the Court. The declaration contains two counts. The first avers that the statements of the petition filed by Christhilf were libelous because they falsely and maliciously imputed to Bartlett a neglect of his duty as receiver, alleging that he was guilty of a contempt for the Court which had appointed him to his position, and charged that he (Bartlett) had committed the crime of embezzlement in regard to moneys intrusted into his hands through the order of the Court. The second count, for an alleged malicious abuse of the process of the Court, will be stated later on in this opinion.

It is insisted that the appellee is not liable to be sued, in an action for libel, on account of anything stated by him in the petition alluded to, because it is claimed that the statements alleged to be libelous are privileged. We have had before us this term cases involving the privilege of counsel and of witnesses, and in the opinions delivered in those cases the authorities upon the subject of privilege have been fully reviewed. The case now before us, as far as the first count of the declaration is concerned, is of a kindred character, and must, therefore, be governed by the view of the law adopted by a majority of this Court in those cases. It is stated in a work of high authority that "an action for defamation will not lie for anything sworn or stated in the course of a judicial proceeding before a court of competent jurisdiction, such as defamatory bills or proceedings filed in chancery or in the ecclesiastical courts, or affidavits containing false and scandalous assertions against others. Therefore, if a man goes before a justice of the peace and exhibits articles against the plaintiff, containing divers false and scandalous charges concerning him, the plaintiff cannot have an action for a libel in respect of any matter contained in such articles; for the party preferring them has pursued the ordinary course of justice in such a case; and, if actions should be permitted in such cases, those who have just cause for complaint would not dare to complain, for fear of infinite vexation. There is a large collection of cases where parties have from time to time attempted to get damages for slanderous and malicious charges contained in affidavits made in the course of a judicial proceeding, but in no one instance has the action been held to be maintainable; but the libeler may be punished, and the abuse repressed, by a prosecution for perjury, the result of which is to make the libeler infamous if he is convicted." (2 Add. Torts, Wood's Ed., sec. 1092.) In Odgers, Sland. & Lib. side page, 193, it is stated that every affidavit sworn in the course of a judicial proceeding before a court of competent jurisdiction is absolutely privileged, and no action lies therefor, however false and malicious may be the statement therein. The only exception is where an affidavit is sworn recklessly and maliciously before a court that has no jurisdiction in the matter, and no power to entertain the proceedings. The Court will order scandalous matter to be expugned, but even for such matter no action will lie. Kidder *vs.* Parkhurst, 3 Allen, 396, was an action for a libel on the plaintiff in a complaint made by the defendant against her

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for perjury. The complaint was made to the grand jury. The Court says: "It (the complaint) therefore appears to have been made in the regular course of justice, and the decisions, ancient and modern, are uniform that no proceeding in a regular course of justice is to be deemed an actionable libel." In Seaman *vs.* Netherclift, 1 C. P. Div., 540, Lord Coleridge, C. J., said: "Now, a long course of authorities, of which, perhaps, the best known, as the most remarkable, is the case of Astley *vs.* Younge, 2 Burrows, 807, has decided that no action of slander can be brought for any statement made by the parties either in the pleadings or during the conduct of the case. The law is so stated very clearly by Lord Eldon in Johnson *vs.* Evans, 3 Esp., 32. It is so stated, also, not, indeed, with absolute certainty, in a note to the well known case of Hodgson *vs.* Scarlett, 1 Barn. & Ald., 232, the author of which note we learn from Baron Alderson, in Gibbs *vs.* Pike, 9 Mees. & W., 358, to have been Mr. Justice Holroyd himself. But I conceive the law on this point to be now quite certain, although most men of any experience in the profession must have seen many instances in which judicial proceedings have been made by parties to them to serve the ends of private malignity." In Henderson *vs.* Broomhead, 4 Hurl. & N., 577, Crompton, J., laid it down that "no action will lie for words spoken or written in the course of any judicial proceeding." And, again: "The rule is inflexible that no action will lie for words spoken or written in the course of giving evidence." Where the cause of action against a defendant was that he falsely and maliciously, and without any reasonable cause, went before a commissioner for taking oaths in the Court of Chancery, and swore out an affidavit stating of the plaintiff, in his character of an auctioneer, that he conducted his business fraudulently and improperly, and that he was not, in the deponent's opinion, a fit and proper person to be intrusted with the sale of certain property then the subject of a suit in the Court of Chancery, and the Court, upon the evidence before it, decided that the plaintiff was not a fit and proper person to conduct the sale, it was held that the affidavit, being made in the course of a judicial proceeding, could form no ground of action. (Revis *vs.* Smith, 18 C. B., 126, 25 Law J. C. P., 195; see, also, Astley *vs.* Younge, 2 Burrows, 807; Townsh. Sland. & Lib., sec. 221.) These authorities, and others which might be cited, hold that statements made in any of the pleadings or proceedings in a cause before a court having jurisdiction of the subject are absolutely privileged, even though made maliciously and falsely. This privilege, protecting against a suit for libel or slander, is founded upon what would seem to be a sound public policy, which looks to the free and unfettered administration of justice, though, as an incidental result, it may, in some instances, afford an immunity to the evil disposed and malignant slanderer.

While the appellant was not, in the literal sense of the term, a party to the case of Muir *vs.* Whiting & Co., he is none the less within the reason, the spirit and the policy of the rule laid down and enforced by the decisions referred to. In this case it is not material whether the privilege invoked be considered an absolute or a qualified one, because the ruling of the court below upon the first count of the *narr.* is correct in either event. If the privilege be an absolute one, no action can be maintained at all for the alleged libelous words; and if, on the other hand, it be only a qualified privilege—that is, a privilege protecting the the party using the words, provided the thing written has relation to the subject matter undergoing judicial investigation—the action cannot be sustained, in this case, for the reason that every averment of the petition did have a most direct relation to the subject matter brought before the Court under that petition. The concession made by the demurrer, that these statements were false and maliciously made, does not render them actionable, if the privilege be absolute, or if they be within the scope of a qualified privilege such as has been described. Now, both the appellant and the appellee were receivers in the case of Muir *vs.* Whiting & Co. It was their duty to collect the assets of the firm, and to preserve them for the benefit of the trust. If either of them became derelict in his duty it was plainly incumbent upon the other to bring that fact to the knowledge of the Court, whose officers they both were. The proper and the only mode to do this was by petition filed in the case, and addressed to the Court. This the appellee did. His act was, therefore, in the due, ordinary and regular course of justice. It was strictly within the line of a proper proceeding before a tribunal having jursidiction of the subject, and having control of its own officers. Even though the words used in the petition are libelous, we think, with Mr. Addison, that, under such circumstances, no case can be found where a recovery has been allowed in a suit for libel founded upon statements contained in such a proceeding. And the reason is obvious. To allow such suits to prevail would most effectually deter every one from presenting a well founded complaint, for fear of being pursued with "infinite vexation." It is better, therefore, where the statements are false, and knowingly false, to leave the party injured to the redress which the criminal courts may apply, than to open the door for the institution of civil suits which may be successfully used as an efficient means to obstruct the full and fearless pursuit and administration of justice. In our judgement, there is nothing disclosed by the first count of the *narr.* to warrant a recovery against the appellee.

The second count presents, however, a different question. It is a count in case for the malicious abuse of the process of the court; and, after reciting that, "it became the duty of the said defendant not to use the process of the said court falsely and maliciously to injure the plaintiff," it avers that the defendant did "maliciously make use of the process of the said the Circuit Court of Baltimore City, by causing to be filed a petition in said Court, to which he made affidavit, for the purpose of having the said Bartlett declared in contempt of Court, and removed from his office of receiver, and to disgrace him in the eyes of the defendant, William P. Whiting;" and that "the facts alleged in the said petition against the said Bartlett, were false, to the knowledge of the said defendant."

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It further proceeds: "By which illegal acts of the defendant, the plaintiff was greatly damnified and injured in his feelings, reputation and business; and especially he lost thereby the custom of the following named firms, to wit, (setting forth their names,) and lost the commissions which would have arisen from his said office of receiver, and was otherwise greatly injured." This is not a count for the malicious prosecution of a civil suit without probable cause. Such actions have been held to lie "although," as observed by this Court in Clement's Case, 67 Md., 462, "there is some conflict as to the cases embraced within the rule." But it was settled in McNamee *vs.* Minke, 49 Md., 133, that a suit for the malicious prosecution of an act of ejectment could not be maintained; the Court observing that, when it has been attempted to hold a party liable for the prosecution of a civil proceeding, it has generally been in cases where there has been an alleged malicious arrest of the person, as in the case of Turner *vs.* Walker, 3 Gill & J., 377, or a groundless and malicious seizure of property, or the false and malicious placing the party in bankruptcy, or the like. The same view was taken in Mayer *vs.* Walker, 64 Pa. St., 283. A malicious abuse of legal process consists in the malicious misuse or misapplication of that process to accomplish some purpose not warranted or commanded by the writ. In brief, it is the malicious perversion of a regularly issued process, whereby a result not lawfully or properly attainable under it is secured. "Whoever," says Mr. Addison, in the second volume of his work on Torts, sec. 868, "makes use of the process of the court for some private purpose of his own, not warranted by the exigency of the writ or the order of the court, is answerable to an action for damages for an abuse of the process of the court." In support of the text, he refers to the case of Grainger *vs.* Hill, 4 Bing., N. C., 212. In that case, the defendant, having instituted proceedings against the plaintiff, caused a writ to issue against him, but employed the officer charged with the execution of the writ to use it as a means of compelling the plaintiff to give up a ship's register—an object totally foreign to that for which the process actually issued. So, also, in Sommer *vs.* Wilt, 4 Serg. & R., 19, where, under a *fi. fa.* on a judgment on a bond with a penalty, the plaintiff directed goods to be levied on, and sold, to the amount of the penalty, or in double the amount of the debt due on it. In Churchill *vs.* Siggers, 3 El. & Bl., 929, Lord Campbell, C. J., said that "it would not be creditable to our jurisprudence if the debtor had no remedy by an action where his person is, or his goods have been, taken in execution for a larger sum than remained due on the judgment; this having been done by the creditor maliciously, and without reasonable or probable cause." And there are instances in which the writ, regularly and properly sued out, was perverted, abused, and made an instrument of oppression. Either something not warranted by its terms, or something in excess of that which was warranted, was done under it. It would, indeed, be a serious reproach to the law, if, in such cases, it afforded no remedy or redress to the injured party. The denial of a remedy in such cases, upon the ground that the law was incapable of affording redress, would be a most serious reflection upon the remedial efficacy of any system of jurisprudence. It would proclaim to the evil disposed an unrestricted license to vex, harass and injure, without accountability, even though their victims should be thereby utterly ruined in their circumstances.

But the case before us does not come within the principles announced in the decisions we have cited. There is nothing on the face of the declaration to show that the order of the Circuit Court was, after having been issued, misused in any way. It was served upon the appellant as its terms directed. He was not arrested, and his property was not seized, under it. It is true that the count avers that the appellee did maliciously make use of the process of the Court by causing to be filed a petition for the purpose of having the appellant declared in contempt, etc.; but these averments relate to acts done with a view to the procuring of the order, and not to anything done under or in pretended pursuance of the order. The allegations of the count impeach the good faith of the proceedings which culminated in the order. They do not show any abuse of the order when issued. If the order was procured maliciously, falsely, and without probable cause, that circumstance would furnish no ground for holding that the regular and proper service of the order amounted to a malicious abuse of the process of the Court. The manner of obtaining the order is quite a different thing from the manner of executing it when obtained. Or, in the language of Bosanquet, J., in Grainger *vs.* Hill: "The action is not for maliciously putting process in force, but for maliciously abusing the process of the Court." All the cases upon this subject depend either upon the arrest of the person, or the seizure of his property; and we have been referred to none where this action was sustained for an injury to the plaintiff's business or good name. Any unfounded suit may result in such injury; but it will hardly be seriously contended that where there has been no wrongful deprivation of liberty, or no illegal seizure of property, that each unfounded suit is to be treated as such an abuse of the process of the law as will sustain an action against the one who instituted it. At all events, we are not prepared to establish such a doctrine, in the absence of all authority to sanction it, and in view of the vexatious and multiplied litigation to which it would inevitably lead. We find nothing in this declaration which indicates that the process of the Circuit Court was maliciously abused, or abused at all, in its service, or that the appellant was wrongfully arrested, or that his property was illegally seized, under it. It follows, therefore, that the ruling of the Court on the demurrer to this count was also correct, and that its judgment must be affirmed.

Judgment affirmed.—*Maryland Law Journal.*

IN TROVER by chattel mortgagee for wrongful sale of property in parcels under execution, amount of recovery is limited to amount unpaid upon mortgage for principal and interest, not exceeding the value of property sold. Ganong *vs.* Green (Mich.), 15 West Rep., 229.

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UNITED STATES CIRCUIT COURT.

WESTERN DISTRICT OF NORTH CAROLINA.

—

FISHER

vs.

CRESCENT INSURANCE COMPANY.

A covenant in an application for insurance, after stating the circumstances and value of the property to be insured, recited "that the foregoing is a just, true and full exposition of all the facts and circumstances in regard to the condition, situation and value of the property to be insured, so far as the same are known to the applicant; and the same is hereby made a condition of the insurance, and a warranty on the part of the insured." *Held* that, in the absence of fraud or gross negligence, the insurance company was not relieved from the contract of insurance by incorrect representations.

On motion for a new trial.

H. C. JONES and C. M. JORDAN, for plaintiff.

BURWELL & WALKER and F. I. OSBORN, for Defendant.

DICK, J.—In considering this motion for a new trial we are called upon to construe the covenant and agreement of the plaintiff contained in the following clause of his application for insurance:

"And the said applicant hereby covenants and agrees, to and with the said company, that the foregoing is a just, true, and full exposition of all the facts and circumstances in regard to the condition, situation, and value of the property to be insured, so far as the same are known to the applicant; and the same is hereby made a condition of the insurance, and a warranty on the part of the insured.

This clause was prepared by the experienced and skillful agents of the company, and was printed in the form of application used in its general business; and in construction the words thus carefully and purposely employed must be taken most strongly against the party who formed and furnished the instrument to the applicant. If this clause was intended by the company to be a strict warranty, then the words, "so far as the same are known to the applicant," are unnecessary, and are well calculated to mislead inexperienced and confiding applicants, who listen to and rely upon the urgent and plausible statements and suggestions of eager and expert agents. As both parties to this contract of insurance were required by law to act with entire candor, fairness and honesty, we may well presume that they fully understood words employed by them in their usual and ordinary meaning, and intended to deal in good faith with each other, and did not contemplate technical objections and niceties not distinctly expressed or necessarily implied in the terms of their contract. It certainly could not have been the purpose of the company to impose upon the plaintiff the strict obligations of warranty when he was only required to make "just, true, and full exposition of all the facts and circumstances in regard to the condition, situation, and value of the property to be insured, so far as the same are known to the applicant." Such words are inconsistent with an honest intention of requiring a strict warranty assuring full knowledge and absolute truth; and a false construction, holding them to constitute such an engagement, would tend to impute to the company a skillful and technical artifice devised for the purpose of deception and fraud.

The defendant, in its answer in this case, made no direct charge of fraud against the plaintiff, and there was no evidence of any fraudulent purpose, and we have no right to infer bad faith. He testified that he acted in good faith, and with an honest purpose, and availed himself of what he regarded as reliable sources of correct information, before he made his representations as to the quantity and value of the whiskey which he desired to insure. The operations of his distillery were suspended in September; his books had been sent to the collector of the district; his whiskey was in a bonded warehouse of the Government, under the custody and the exclusive control of a storekeeper, in a distant town; and he had no right to require the presence of the store-keeper to gain access to the warehouse, unless he was ready and willing to pay taxes, and remove packages. He wished to insure the whiskey because he was not prepared to pay the taxes, and remove packages, and, in the mean time, he wished to guard against damage and loss that might happen by fire. He examined the warehouse book in which the law required the storekeeper to keep an accurate list of the packages and number of gallons in the warehouse, and also the amount at any time withdrawn. He showed this book to the local agents of the company, who assisted him in making a computation of the quantity of whiskey in store. His estimation of the value of the whiskey was a matter of opinion, founded upon the fact that he had made ready sale by retail of the same quality of whiskey at the estimated value, and it was worth that price to him at his usual place of business. What he had made and expected to make by the sale of the whiskey, in his ordinary business, might reasonably have been considered by him as a true value at the time he made his application for insurance: Insurance Co. *vs.* Vaughan, 92 U. S., 516. For the purpose of showing that the company did not intend that the estimated value of the whiskey should be a fixed value, and amount to a warranty, or be regarded in their liability for any loss that might happen, we refer to the following clause in the policy:

"The cash value of property destroyed or damaged by fire shall in no case exceed what would be the cost to the assured, at the time of the fire, of replacing the same."

The company seems to have contemplated and provided for a fluctuation in value dependent upon the supply and demand in the markets of the country. In this respect the policy was an open one, as the cash value of the whiskey was required to be ascertained and determined at the time of any adjustment of loss. We may well presume from the terms of the policy that the company well knew that such kind of property could not be accurately valued—that the estimation of value made by the applicant was mere matter of opinion—and that the only true test of the cash value of whiskey in packages was the price at which similar whiskey could be purchased in the markets of the country.

The plaintiff probably desired and expected

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to obtain a valued policy when he made application and paid the premiun on his estimate of value; but the company was not willing to execute and issue such a policy, although it received, without objection, the full consideration of such a contract. The policy before us has not the essential elements of a valued policy. In a valued policy, the agreement of the parties fixes the value of the subject insured. It not only determines the value of the property, but also the extent of the loss that may occur, and is the settled basis of adjustment between the parties, unless the valuation can be shown to be fraudulent or erroneously excessive. If the extent of liability in case of loss is left undetermined in the policy, and is to be ascertained at the time of adjustment of loss, by some method of valuation dependent upon evidence aliunde, then the policy is an open one. Boutelle *vs.* Insurance Co., 31 Amer. Rep., 666. In this policy the company made provision for determining the value of the property, and the extent of its liability in case of loss, by fixing, as a standard of value, the cash price of similar whiskey in the markets of the trade. This stipulation made this policy an open one; and an overvaluation by the assured in his application was not material to the risk, and did not avoid the policy, as no fraud was alleged or proved. The weight of the testimony showed that the local retail value of the whiskey to the assured was as stated by him in his application; and the jury would probably have found that issue in his favor, but for the positive instructions of the Court that they must be controlled by the testimony as to the market value, as that was the value stipulated for in the policy by the parties. The jury assessed the value at a higher rate than appears in the record, but, the Court being of opinion that the value assessed was greater than was warranted by the weight of the testimony as to the market value, the counsel of the plaintiff consented that the verdict might be lessened to the amount for which judgment was rendered.

Under such circumstances it seems illiberal on the part of the company to insist that the finding of the jury as to value should avoid the policy. The plaintiff only engaged, in his application, to give the company the benefit of his best information and opinion as to the value of the whiskey; and he would have been able to show the correctness of his opinion as to the local value to him in his retail business, but for a clause in the policy, executed by the company after his application was presented, which prevented the evidence on this question from being considered by the jury. Upon this phase of the case I will not indulge in further comment, but proceed to construe the force and effect of the words of warranty, so urgently and ably insisted upon by the defendant's counsel. This policy must be construed, like all other contracts, by the well settled rules of interpretation that are applied to written instruments. In looking at the words of the policy, and considering all the parts together in the light of attendant facts and circumstances, well known to the local agents of the company, we are of opinion that we may fairly infer that the intention of the parties, when they used the express terms restricting the statement of the applicant as to the quantity and value of the whiskey in the warehouse, to his personal knowledge, was to qualify the words of warranty, so that they should not extend further than a warranty of the honest belief of the applicant in the truth of his statements. Such statements were clearly in the nature of representations—the mere expression of an opinion founded upon knowledge—derived from what the assured might honestly and reasonably have regarded as reliable sources of information; and as there was no evidence of fraud, gross negligence, or want of good faith on the part of the plaintiff, their incorrectness did not vitiate and avoid the policy on which this action was brought.

We think that our opinion is founded in reason and justice, and is fully sustained by adjudged cases. Bank *vs.* Insurance Co., 95 U. S., 673; Moulor *vs.* Insurance Co., 111 U. S., 335, 4 Sup. Ct. Rep., 466; Miller *vs.* Insurance Co., 7 Fed. Rep., 649; Luce *vs.* Insurance Co., 19 Myers' Fed. Dec., sec. 1484.

Motion for new trial denied.—*Federal Reporter.*

The Country Attorney.

The country attorney is a happy man, although he doesn't know it. He lives in a house in the midst of the village, for he knows too much to try to "farm it," but he has yard and verdure enough about him to afford him as he sits at his office window ample contrast with the well filled shelves of books and papers which line his wall.

He has recently built within the curtilage of his dwelling—that is to say, in a front corner of the yard aforesaid—an office for himself, the front door of which looks out on the main street, and the back door of which opens upon the well worn path to the side piazza of his house.

This path is not his alone. Somebody is accustomed to trip down it early in the morning before clients come, or in the twilight or the edge of the evening, to whose bright visits are due much of the order and neatness with which the shelves and cases usually, and the new blotting paper and fresh pens on the table almost always, light up this cosy room. The open fireplace too is adorned with brasses that look all too bright for the sombre leather bindings and faded papers around the room.

This man has an active life, with many small cases and few large ones. He has to take turns, in the intervals of student assistance, as his own managing clerk and his own copyist, and he knows every point in every case that he has, or ever has had, with a certainty that would disconcert some of us.

He imagines sometimes that he would like an office in the ninth story, with a steam elevator, large fees and a general rush. He will probably have one some of these days (when those boys that are playing in the yard have grown up) and he will have the accompaniments of great rents, expensive staff, fierce competition and interviewers about his clients' affairs.

But he will never forget the days he spent in that leisurely and studious office under the trees, the short walk to the town hall where the circuit was held, and the fishing rod and gun that he generally put into the wagon when he had to go into the next county on business.—*Daily Register.*

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SUPREME COURT OF PENNSYLVANIA.

ELLEN CAVANAUGH, *Executrix of Thomas Cavanaugh, Deceased, Plaintiff in Error.*

vs.

GEORGE WOLF BUEHLER and THOMAS H. ROBINSON.

Decided May 21, 1888.

1. Where articles of agreement for the sale and purchase of land were executed by A and B, through a certain real estate agent, who acted for both parties, and thereafter B, the vendee in such articles, executed articles for the sale of the same land to C, through the same agent, and thereafter certain sums received by B from C on account of his sale to the latter were turned over by B to said agent, *held*, that the mere receipt of such money by the agent would not constitute a payment by B upon his articles with A, unless it was by some act or agreement, binding alike upon B and the agent, and through the latter binding upon A, applied as such payment.
2. In applying the principle of *res judicata* the inquiry is not always, perhaps, as to the identity of the cause of action but as to the identity of the matter in issue; and the matter in issue is not what comes collaterally or incidentally in controversy, under the evidence, but what is essentially and directly at issue in the cause.
3. Where, upon the trial of an action, upon an agreement for the sale and purchase of land, for the purchase-money a deed from the vendor to the vendee, for the land covered by the agreement in suit and also for land covered by another agreement between the same parties, is introduced in evidence as tending to show payment of the purchase-money, such deed is brought into the case collaterally only, and hence the question of its delivery is not to be considered as made *res judicata* by the judgment in such action; nor is the agreement not then in suit to be considered as so merged in such deed as to prevent a subsequent separate action thereon to recover the purchase-money called for thereby.

Mr. Justice CLARK delivered the opinion of the Court:

On January 10, 1867, Buehler and Robinson, through their attorney in fact, Russell, by articles of agreement, sold to Cavanaugh lot No. 2657, in the city of Erie, for the consideration of $1,250, and, on March 5 thereafter, the adjoining eastern half of lot No. 2660, for the consideration of $750. These sales were negotiated through Hayes & Keplar, real estate agents, who were authorized to receive and did receive several installments of the purchase-money. Cavanaugh subsequently sold the same lots in parcels to Hageny, Sullivans and Nunn; these sales were also effected through Hayes & Keplar, who were authorized by Cavanaugh to receive and receipt for the purchase-money, and they did receive and receipt for the same as it was paid in.

This action of covenant is brought upon the agreement of January 10, 1867, to enforce payment of the balance of the purchase-money. The defendant's contention is that the purchase-money was paid in full before suit brought, by moneys coming into the hands of Hayes & Keplar from Hageny, Sullivans and Nunn, on their several purchases from Cavanaugh; that as Hayes & Keplar were not only the agents of Cavanaugh, but also of Buehler and Robinson, the money received by them from these various sources must be treated as payments not only upon the agreements on which they were primarily paid, respectively, but also upon the original purchases from Buehler and Robinson. It is not alleged that there was any express agreement, in advance, to this effect, nor is it seriously contended that this was the effect of the relation which Hayes & Keplar bore to the respective parties. Hayes & Keplar, in receiving money from Hageny, Sullivans and Nunn, acted as the agents of Cavanaugh, and the money in their hands, thus received, was of course the money of Cavanaugh, until by some act of his or of Hayes & Keplar with his consent, it was actually turned over to Buehler and Robinson. Hayes & Keplar were responsible to Cavanaugh until by his direction, they were enabled to, and did, in some way, assume responsibility to Buehler and Robinson. But it is contended that there was evidence from which the jury might infer that the money coming into the hands of Hayes & Keplar, the common agents of both, had in fact been so applied. The defendant alleges, that on January 2, 1875, Hageny paid to Cavanaugh $333.25 by check of Erie City Building & Loan Association on the Humbolt Safe Deposit & Trust Co.; that the check was indorsed by Cavanaugh and delivered to Hayes & Keplar; that Cavanaugh exchanged city warrants for the check, and lifted it, leaving in their hands however, the full amount of the check. It is conceded, moreover, that on September 5, 1878; Hayes & Keplar had a balance in their hands of $497.76, received from Hageny, Sullivans and Nunn, or from some of them, as payments on their purchases from Cavanaugh; this sum is exclusive of $333.25 above referred to, the receipt of which latter sum Hayes & Keplar positively deny.

It is admitted that the $333.25 was not of itself sufficient to pay Cavanaugh's debt to Buehler and Robinson, but that this sum taken with the amount which Hayes & Keplar admit to have been in their hands, was sufficient and more than sufficient for that purpose.

At the trial, the plaintiffs by their fifth point requested the Court to instruct the jury as follows: "That there is no evidence that Cavanaugh ever directed the application of any payment by Hageny and Sullivans or others to the Buehler articles excepting those payments which were actually so applied and indorsed by Hayes & Keplar on said articles." The point was affirmed, and this constitutes the first assignment of error.

The only portion of the evidence which has been referred to, or which upon examination of the whole case we have been able to find, bearing or supposed to bear upon the question raised by the answer to this point, is the testimony of John Biggers, in relation to the delivery of the check for $333.25 to Hayes & Keplar, on January 2, 1875. Biggers testifies, that when Cavanaugh had indorsed and was in the act of delivering this check, he inquired of Mr. Hayes, "Does this finish paying on the Russell lot?" And that Mr. Hayes replied: "Yes, it does," and the parties, without more, separated. It is contended that this was an express application by Cavanaugh of the check to the payment of his debt to Buehler and Robinson; and further, that as it was said "to finish paying on the Russell lot," it was some evidence that the other

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moneys were, or were to be, applied to the same debt.

But we cannot see that the testimony of Biggers could have had any reference to the contract between Beuhler and Robinson and Cavanaugh. The lots, it is true, were known, and throughout the entire transaction appear to have been spoken of, as the "Russell lots;" but Biggers says that Cavanaugh spoke of the "Russell lot;" the inquiry was, "Does this finish paying on the Russell lot?" Now, it is clear that the money was paid by Hageny on the Russell lot, which he had purshased; it was in full of the exact balance owing by him; it did finish paying for that lot; and if the conversation occurred at all, it related, we think, to Cavanaugh's contract with Hageny. If the question and answer were directed to the Cavanaugh lots, to which of them did they refer? These lots, although adjoining, were distinct; they were known by different numbers, were purchased under separate contracts, and were to be paid for on different terms and considerations. The money, which it is alleged was thus applied, was more than sufficient to pay for both, and the check could not, in any proper sense, be said to "finish" the contract.

But even if the parties did refer to Cavanaugh's purchase, there is nothing to show which one of the two lots was referred to, and we cannot assume, without proof, that the reference was to both lots together, or to the particular lot covered by the contract in suit. The evidence, referred to, can have no legitimate effect beyond the application of the $333.25, and as to that the learned judge, in his general charge, in the clearest and most explicit manner, instructed the jury, if they believed the testimony of Biggers, a credit should be allowed for that sum.

But even it be assumed that Cavanaugh did direct Hayes & Keplar to apply the money in their hands to the purchase-money owing Beuhler and Robinson, there is not the slightest evidence that they did so apply it. Hayes & Keplar were the agents of Cavanaugh; in that capacity they received the money, and in that capacity they retained it, until in some way it was turned over to Buehler and Robinson; until that was done, it was subject to his order, and liable to attachment for his debt. It does not appear that Hayes & Keplar paid the money to Buehler and Robinson, receipted it on the contract, credited it to their account, or in any way applied it to the debt in suit. The mere fact that they had the money would not constitute a payment, unless it was, by some act or agreement, binding alike upon Cavanaugh, and upon Hayes & Kepler, and through them upon Buehlar and Robinson, applied as such, and upon a full examination of the case we find no evidence to this effect.

It is said, however, that a deed in due form, dated December 27, 1874, was made from Buehler and Robinson to Cavanaugh, for both lots, not only that described in the agreement of March 5, 1867, but also that described in the agreement of January 10, 1867. Whether or not this deed was actually delivered, was submitted as a question of fact to the jury, and we may infer from the verdict that the jury found that it was not. The defendant's contention is, however, that the delivery of the deed was brought in issue in the trial of the action upon the agreement of March 5, 1867, at No. 199, May Term, 1880, and that the question of the delivery had thereby passed *in rem judicatem;* and that the Court erred in submitting the question to the jury. The defendant further contends, that as the articles were thereby merged in the conveyance, this suit cannot be maintained.

But it is plain that the specific thing or matter in issue, in the trial of 199 of May Term, 1880, was the payment of the purchase-money of the agreement, dated March 5, 1867. The question of the delivery of the deed was not in issue in that case, within the meaning of the rule, although the fact was controverted at the trial; the deed was offered merely as evidence to establish the particular manner which was in issue. The delivery of the deed was incidental only to the real issue. In applying the principle of *res judicata* the inquiry is not always, perhaps, as to the identity of the cause of action, but as the identity of the matter in issue; and the matter in issue is not what comes collaterally or incidentally in controversy, under the evidence, but what is essentially and directly in issue in the cause. King *vs.* Chase, 15 N. H. 15; Wells, *Res Adjudica*, 167; Duchess of Kingston's Case, 20 How. St. Tr., 538.

The delivery of the deed was *prima facie* evidence of the payment of the purchase-money, and it was for this purpose the delivery was sought to be established. But mere evidential facts are not usually held conclusive; they must be such as are within the substance of the issue; all others are merely collateral. "Neither the judgment of a concurrent nor exclusive jurisdiction is evidence of any matter which came collaterally in question, though within the jurisdiction; nor of any matter to be inferred by agreement from the judgment." Duchess of Kingston's Case, *supra;* Hibshman *vs.* Dulleban, 4 Watts, 183.

Besides, the offer of the defendant's counsel shows that the former trial was upon a different contract: the evidence was of payments specifically applied thereon; the testimony of Biggers was introduced to show the payment of the $333.25, and this sum if allowed was sufficient to satisfy the debt; evidence was introduced, it is true, as to the delivery of the deed, but it does not appear, nor was it offered to be shown in this case, upon what particular portion of the evidence the verdict was rendered; the delivery of the deed was, therefore, not essential to the finding of the former verdict, as the jury may well be supposed to have rendered their verdict upon other and different grounds.

The delivery of the deed, as we have said, was *prima facie* evidence only of the payment of the purchase-money: to the extent to which the agreement was executed, it was merged in the deed, but if the purchase money was actually unpaid, and otherwise unsecured, the plaintiff might still recover it in this form of action. Byers *vs.* Mullen, 9 Watts, 266; Neil *vs.* Thompson, 4 Watts, 405.

We are of opinion that the record of the former suit was properly rejected for the purpose for which it was offered. Nor do we discover any error in the Court's refusing to allow the deed to be sent out with the jury. What papers

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shall be furnished to the jury is largely in the discretion of the Court, and we see no abuse of that discretion in this instance.

The judgment is affirmed.

Nerve in Law.

If every lawyer should express his honest opinion on the one thing lacking in the profession he would answer, *nerve*. It will meet him at the office with his ever ready client who wants a law suit, and may not have a case, or the defaulter who would skip out and defraud his creditors of their just claim, or of one about to let go his rights rather than contest them in court or office, in suits or settlements in the business of law, whether trials or counsel, *nerve* is the fine art needed. Within the year an able advocate has won a will contest reaching into millions, and just as he was about to pick the fruits of his long and earnest effort, he was set upon by a couple of blackmailers, and, had he been less nervy than he was, would have been forced to release a large share of his profits; when his nerve stood by him and he became victorious. In another city a transaction reaching nearly a quarter million was let go by the unnerving of counsel at a point when the contracts were almost completed, and many thousands of earnest money were deposited. What a test of nerve power was this? As if one seeing a fractious horse tied to a post and frightened by a band should notice the animal and let him run away, rather than hold him to the post till the band passed by. We have all seen these cases during the year; seeing angry clients throwing away costs for spite, and others throwing away rights that a little more nerve and coolness would have saved, In this is a wise counsel of greatest value. To-day it is a cattle contract, to-morrow a stock company, next week a business block, later on a street railway project, or a farm to cut up into city lots, or an option in real estate, or criminal to defend, or a damage suit to settle, nerve is the mettle that a lawyer most should cultivate. As business men are supposed to grow in trade by experience and learn by practice, so age adds new wisdom to the oldest counsel. His books have left out the case that last come to him. Life's trades and dealings and conditions are changing. He needs new knowledge. If he halts the busy procession will file past his office door to another counsel as if they saw the signal written "behind the times." The competition is so intense in law to-day, the attorneys are so very numerous and their work so exacting, that the fittest and strongest alone succeed. To make a bargain about it and stand by it requires both nerve and courage.—*J. W. Donovan in Central Law Journal.*

IN THE late Lord Cockburn's "Circuit Journeys" it is recorded that "at Edinburg the old judges had a practice at which even their barbaric age used to shake its head. They had always wine and biscuits on the bench when the business was to be plainly protracted beyond the usual dinner hour. The modern judges—those, I mean, who were made after 1800—never gave into this; but with those of the preceding generation, some of whom lasted several years after 1800, it was quite familiar. Black bottles of strong port were set down beside them on the bench, with glasses, carafes of water, tumblers and biscuits; and this without the slightest shame or attempt at concealment. The refreshment was generally allowed to stand untouched and as if despised for a short while, during which their lordships seemed to be intent only on their notes. But in a little while some water was poured into the tumbler and sipped quietly, as if merely to sustain nature. Then a few drops of wine were ventured on, but only with the water. Till at last patience could refrain no longer, and a full bumper of the pure black element was tossed over, after which the thing went on regularly, and there was a comfortable munching and quaffing, to the great envy of the parched throats in the gallery. The strong-headed ones stood it tolerably well. Bacchus had never an easy victory over Braxfield. But it told plainly enough upon the feeble or the twaddling, such as Eskgrove and Craig. Not that the ermine was absolutely intoxicated, but it was certainly muzzy. This, however, was so ordinary with these sages that it really made little apparent odds upon them. Their noses got a little redder and their speech somewhat thicker, and they became drowsier. But these changes were not perceptible at a distance, and they all acquired the habit of sitting and looking judicial enough even when their bottles had reached the lowest ebb." Lord Cockburn himself never emulated these giants, not even in his younger days, when he bids thus: "Take notice, there never was the slightest drunkenness. Elevation there was, but it stopped far, far below the intoxication mark. Excess in wine was never the habit of any set of friends into which I have been thrown." Yet, at his Jedburg circuit dinner in 1851 "nineteen persons drank thirty-five bottles of port."

WE HEARD the other day of a man who had been brought up in a village debating society, and had been lately elevated to the dignity of judge of a criminal court. The counsel for a defendant appeared before him at the hour named for the trial, but the prosecuting attorney had not arrived. The defendant's counsel said he believed the hour fixed had passed and the judge said it had. "I move," said the counsel, "that the complaint be dismissed and the defendant discharged." "Is the motion seconded?" said the judge. "I second the motion," said the prisoner. "It is moved and seconded," said the judge, that the complaint be dismissed and the defendant discharged. So many as are in favor of that motion will say 'aye.'" The defendant and his counsel voted "aye." "The contrary minded 'No.'" There was no response. "The 'ayes' have it—the motion is carried."—*New Jersey Law Journal.*

THE exercise of the utmost human foresight, knowledge, skill and care, required of railroad operated by steam, is also demanded of a street railway. Dougherty *vs.* Missouri R. Co. (Mo.), 15 West. Rep., 235.

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Book Notice.

Federal Decisions. Cases argued and determined in the Supreme, Circuit and District Courts of the United States. Arranged by William G. Meyer. Published by the Gilbert Book Co., St. Louis, Mo. Vol. 23.

The above volume, of over 1200 pages, treats of but one subject, that of maritime law. Benjamin Vaughan Abbott is the editor, assisted by Mr. Peter Kemper. The subject is considered under the following primary subdivisions: Admiralty Jurisdiction; Liens; Maritime Property; Maritime Contracts and Services Generally; Charter-parties; Average; Fisheries and herein of Whaling Voyages; Master of Vessel; Seamen; Towage; Pilots and Pilotage; Wharves; Wharfage; Dockage; Storage; Salvage; Regulation of Management of Vessels; Forfeiture and Seizure; Limitation of Owner's Liability; Torts and Crimes of Maritime Cognizance; Collision. The volume is a complete and comprehensive treatment of the subject and adds to the already high reputation of the work.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

August 28.

11309. Peter B. Saur *vs.* George P. Fenwick et al. To correct error in description of property in trust deed. Com. sol., H. T. Wiswall.

August 29.

11310. Andrew Baumann *vs.* Ferdinand Schmidt et al. For release. Com. sol., F. Schmidt.

11311. Frederick Housam, alleged lunatic. Upon petition of Mary M. Spromdel for appointment of committee. Com. sol., C. Storrs.

August 30.

11312. John Sherman *vs.* John A. Augenterfer et al. To divest and vest title. Com. sol., R. Hagner.

August 31.

11313. Mary Widmann *vs.* Charles Widmann. For divorce. Com. sol., D. E. Cahill.

11314. John Sherman *vs.* Matilda V. Chapman et al. To sell lots. Com. sol., R. Hagner.

September 1.

11315. William L. Lyon et al. *vs.* Elizabeth Riley et al. For receiver, account and sale. Com. sols, Birney & Birney.

September 3.

11316. Delia Boyle *vs.* Richard Boyle. For divorce. Com. sol., N. H. Miller.

CIRCUIT COURT.—New Suits at Law.

August 29.

28922. The United States, *ex rel.* August Brentano et al. *vs.* John W. Ross, Postmaster City of Washington. Mandamus. Plffs atty, A. S. Browne.

28923. W. J. McCord *vs.* New York Life Insurance Co. of New York City. Account, $9,900.75. Plffs atty, Hunton and Chandler.

28924. J. Wallace Barnes *vs.* William H. Rollins et al. Damages, $5,000. Plffs attys, Rutherford and Safford.

September 1.

28925. John T. Vincent *vs.* Maurice Ruddleeden. Damages, $10,000. Plffs atty, C. Carrington.

September 3.

28926. Humphrey Ware, administrator, *vs.* The Herdic Phaeton Co. Damages, $10,000. Plffs attys, Carrington and Williamson.

28927. Frederick M. P. Montague *vs.* The Columbia Railroad Co. Damages, $30,000. Plffs attys, Lancaster and Wilson.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

William Muehleisen, Plaintiff, *vs.* Carl Reesch, Defendant. } No. 28795. Docket.

On motion of the plaintiff, by Mr. W. J. Newton, his attorney, it is ordered that the defendant, Carl Reesch, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject credits of the defendant attached in the hands of August Schwartz to the payment of the debt due by the defendant to the plaintiff.

Provided a copy of this order be published once a week for three successive weeks previous to said rule-day in the WASHINGTON LAW REPORTER and *The Washington Post* newspaper, printed in Washington.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Jane B. Hawkins et al., Plaintiffs, *vs.* Katharine A. Craig et al., Defendants. } No. 11272. Docket 28.

On motion of the plaintiffs, by Messrs. Carusi & Miller, their solicitors, it is ordered that the defendant, Anna Maria Berlin, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have sale made of all that piece or parcel of ground situate in the City of Washington, in the District of Columbia, known as lot numbered twenty-two (22), in square numbered one hundred and five (105), and the proceeds distributed to the heirs and devisees of Maria B. Craig, deceased, according to the rights of plaintiffs and defendants.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Mary M. Frick *vs.* H. C. Alleman, Surviving Trustee. } No. 11245. Docket 28.

On motion of the plaintiff, by Mr. W. M. Offley, her attorney, it is ordered that the defendant, H. C. Alleman, Surviving Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure the reappointment of a new trustee in place of H. C. Alleman, Surviving Trustee, to release the deed of trust now outstanding upon lot 21, in S. A. Terry's subdivision of original lot 1, in square 722, in the City of Washington, District of Columbia, the indebtedness secured thereby having been fully paid and satisfied.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Hester A. Clements**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of August, 1888.

EDMUND CLEMENTS, Ex'r, 1016 8th st. n. w.

36 No. 3201. Ad. D. 14. Jos. Shillington, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 30th, 1888.

In the case of Charles E. Sutherland, Executor of **Jane Brennan**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 21st day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

36 No. 2765. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Lehnert**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1888.

PHILIPPINA LEHNERT, Ex'x,
1217 New Hampshire ave.

36 No. 3205. Ad. D. 14. Ferd. Schmidt, Proctor.

IN JUSTICE COURT OF THE DISTRICT OF COLUMBIA.

BEFORE CHARLES WALTER, ESQ.

The 31st day of August, 1888.

William H. Clagett vs. **Pembroke Marshall.** } No. 14038.

On motion of the plaintiff, by Mr. Duhamel, his solicitor, it is ordered that the defendant, **Pembroke Marshall**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce the landlord's lien upon the goods of defendant for rent due.

By the Court. CHARLES WALTER, Justice, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court.

The 4th day of September, A. D. 1888.

Daniel Pratt Wright, Complainant, vs. **Emma C. Wright et al.**, Defendants. } No. 10908. Equity Doc. 26.

Ordered that the sale made and this day reported by Reginald Fendall, Trustee in this cause, be ratified and confirmed, unless cause to to the contrary be shown on or before the 4th day of October next.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once in each of three successive weeks before said last-named day.

Said trustee states in his report that he has sold, at private sale, part of lot three (3), in square four hundred and twenty-nine (429), in the City of Washington, D. C., described in the proceedings in this cause, for the sum of $37,500.00.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Dora Steele vs. **Marshall Steele.** } No. 11141. Docket.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **Marshall Steele**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of willful and uninterrupted desertion for over five years.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.,

36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Joanna Hetherman vs. **John Hetherman.** } No. 11241. Eq. Docket

On motion of the plaintiff, by Mr. H. L. Prince, her solicitor, it is ordered that the defendant, **John Hetherman**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bonds of matrimony on the ground of willful desertion and abandonment by the plaintiff.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk. &c.

36 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

The German-American Bank of Rochester, New York. vs. **The Schlicht and Field Company.** } No. 28701. Docket.

On motion of the plaintiff, by Mr. Mussey, its attorney, it is ordered that the defendant, **The Schlicht and Field Company**, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover the sum of $26,320.65 with sundry interest thereon, alleged to be due the plaintiff by the defendant, for money paid by the plaintiff to the defendant upon sundry notes and bills of exchange negotiated by the defendant with the plaintiff.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Philip T. Dodge vs. **The Schlicht and Field Company.** } No. 28700. Docket.

On motion of the plaintiff, by Mr. Mussey, his attorney, it is ordered that the defendant, **The Schlicht and Field Company**, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover the sum of $1,354.88 with sundry interest thereon, alleged to be due from the defendant to the plaintiff, on account of professional services and disbursements rendered and made by him to and for said defendant.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

36 By M. A. CLANCY, Ass't Clerk.

IN JUSTICE COURT OF THE DISTRICT OF COLUMBIA.

BEFORE CHARLES WALTER, ESQ.

The 5th day of September, 1888.

William H. Clagett vs. **Pembroke Marshall.** } No. 17041. Docket.

On motion of the plaintiff, by Mr. Duhamel, his attorney, it is ordered that the defendant, **Pembroke Marshall**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce plaintiff's lien as landlord as against goods and chattels of defendant on the premises, 819 Market Space, in the City of Washington, D. C.

36 By the Court. CHARLES WALTER, Justice, &c.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of **Alexander A. Greer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1888.

LUCINDA H. GREER, Adm'x, 1113 10th st. n. w.

35 No. 3189. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Albert B. Baker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1888.

SIMON D. NEWCOMB, Ex'r, 926 N. C. ave., City.

35 No. 3166. Ad. D. 14. F. W. Jones, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Charles Homiller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of August, 1888.

JAMES H. TAYLOR, Ex'r, 613 15th st.

35 No. 3169. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 24th, 1888.

In the case of **Samuel E. Arnold**, Administrator of **Charles Clark**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

35 No. 2821. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 27th, 1888.

In the case of **Emily M. Farless**, Executrix of **Anna J. G. Mirick**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executrix will take the benefit of the aw against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William J. Peyton**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of August, 1888.

PAULINE L. PEYTON,
JOSEPH I. PEYTON,
Executors.

35 No. 3195. Ad. D. 14. C. C. Lancaster, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Cuthbert Walker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1888.

ISABELLA WALKER, Ex'x, 2523 K st.

35 No. 3129. Ad. D. 14. Matthews & Matthews, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Laura V. Cowling et al. v. **Blanche Cowling et al.** } No. 10961. Docket 27.

The Trustees herein, Chapin Brown and Andrew B. Duvall, having reported the sale of the real estate in the proceedings mentioned, viz., lot 2 and part of lot 1 in square 252, in City of Washington, D. C., containg 6020¼ sq. feet at $4.10 per sq. feet, amounting to $24,684.05 to Walter C. Johnson, it is, by the Court, this 31st day of July, A. D. 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of September next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last mentioned date.

E. F. BINGHAM, Chief Justice.

A true copy. Test: R. J. MEIGS, Clerk.

32 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **George W. Seaver**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of August, 1888.

NELLIE S. SEAVER, dm'x, 1229 N. Y. ave. n. w.

33 No. 3188. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **P. H. Sheridan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of August, 1888.

IRENE RUCKER SHERIDAN, Ex'x,
MICHAEL V. SHERIDAN, Ex'r,
LINDEN KENT, Ex'r,
1712 N st. n. w.

33

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 17th, 1888.

In the case of George J. Gockeler, Executor of **Christian G. Gockeler**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test. DORSEY CLAGETT, Register of Wills.

34 No. 2814. Ad. D. 13. Leon Tobriner, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Harriet Shockey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of August, 1888.

34 LUCY M. SHAW, Adm'x, 118 3d st. s. e.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 20th, 1888

In the case of Thomas I. Gardner, Executor of **Griffin Saunders**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

34 No. 2775. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Benigne Pargay Becker**, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of August, 1888.

VICTOR BECKER, Adm'r c. t. a., 801 9th st. n. w.

34 No. 3162. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Niland**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 20th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 20th day of August, 1888.

HANNAH NILAND,
LAURENCE CONNOR,
PETER McCARTNEY,
Executors.

35 No. 3196. Ad. D. 14. Neal T. Murray, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Etta Fetterman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of August, 1888.

CHARLES B. HARING, Adm'r,
2084 8th st. n. w., City.

34 No. 3193. Ad. D. 14. E. B. Hay, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of **Robert Moore**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 16th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 16th day of August, 1888.

34 A. P. LACEY, Adm'r c. t. a., 604 F st n. w.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Thos. C. Homiller et al. vs. **Chas. Homiller et al.** } No. 10687. Equity Docket 27.

The Trustees appointed to make sale in this cause having filed their report of sales on the 10th day of August, 1888, it is, on motion of complainants' solicitors, this 13th day of August, 1888, ordered that the said sales be, and the same hereby are ratified and confirmed, unless cause to the contrary thereof be shown on or before the 15th day of September, 1888.

Provided a copy of the foregoing order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before the said 15th day of September, 1888.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

34 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Genevieve B. Wimsatt et al. vs. **Richard Wimsatt et al.** } Eq. 11181.

The Trustee in this cause having made sale of lot 25, in square 390, to James M. Lanigan, at and for the sum of twenty-three hundred dollars, as directed by the Court. It is, this 20th day of August, 1888, ordered that the said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of September, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before the said 21st day of September, 1888.

By the Court. WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

34 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard J. Marshall**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of August, 1888.

JANE V. MARSHALL, Adm'x, 620 E st. n. w.

34 Thos. M. Fields, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 13th, 1888.

In the matter of the Estate of **Lindsay Muse**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William H. A. Wormley and John F. Cook.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3152. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

August 13th, 1888.

In the matter of the Estate of **Elizabeth MacLeod**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Norman S. Bestor and Orson H. Bestor.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3187. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 8th, 1888.

In the case of **Frederick W. Pratt**, Executor of **Lewis Brown**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2742. Ad. D. 13. A. A. Brooke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 10th, 1888.

In the case of **Lewis C. Reinburg**, Administrator c. t. a. of **Sarah A. L. Barnes** (nee Martin), deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2756. Ad. D. 13. N. Dumont, Proctor.

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Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
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Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
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Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
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Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

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Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

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Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
Lovelass on Wills.

Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed.

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vol. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
Pothier on Obligations, vols. 1, 2.
Powell on Devises.
Preston on Abstracts of Title, 2 vols. in one.

Railway Law (Bonner), 1878.
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Roberts on Wills, vols. 1, 2.
Roper on Wills.

Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
Smith's Probate Law, 1868.
Smith's Elements of the Law.
Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
Wellford's Equities.
Wentworth on Executions.
Willis on Interrogatories.
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Williams on Executors, &c., vol. 2, Thobault's Notes.

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VOL. XVI. - - - - - - - No. 37

WASHINGTON, D. C. - - - SEPTEMBER 12, 1888

Address by Hon. George Hoadley.

The following oration is printed at the request of one of the leading practitioners of the District who thinks "it is a hopeful sign when an American lawyer of the experience and training of Judge Hoadley at the bar and upon the bench, talks so plainly and frankly to the members of a profession of which he is a conspicuous and scholarly member."

Mr. President, and Gentlemen of the American Bar Association: It seems to me that he to whom is assigned the duty I perform to-day holds a brief in a prosecution instigated by the American bar against itself, in which the accused is in danger of conviction of non-feasance; of the charge of doing in its day and generation less than might have been done for the relief of suitors, and the improvement of the laws. The duty to strive for an ideal jurisprudence, for a perfect procedure, is of perpetual obligation. Perhaps a greater or less degree of failure is also perpetually probable, for in this world the ideal is never reached. Its very nature is to recede as man advances. Nevertheless the duty to follow is urgent. But there is a wide difference between failure in effort and in result. He is blameworthy who does not try; not necessarily if he fail. The question is always, has opportunity been wisely improved? If it did not exist the accused must be acquitted. The successful defense is reached when it is shown that the best possible has been done, and that if the world be not left with equipment better adapted to enable the next generation to avoid controversies, and to settle them justly when they arise, it is not for want of diligent effort on the part of the lawyers of to-day.

It will indeed be very happy or a very sad day when an American lawyer can persuade himself that legal principles can be bettered by no restatement, and that legal methods need no reform. A happy day in the contemplation of perfect results—or sad, when in the decay of the profession the spirit of inquiry and denial shall have so far departed as to leave its members without desire for improvement of their science or its methods.

As long as men's minds fail to receive the same impression from the same facts—as long as these are seen from different angles—as long as men's interests and ambitions clash, so long will there be controversies enforcing the existence of legal interpreters. The necessity of judges and lawyers is grounded on human nature, in the diverse characters and characteristics of men, and will endure as long as the cause of its existence shall continue, that is to say, forever.

It goes without saying, that next, even if not equal or superior to his duties to his client, are the lawyer's obligations to the community and to the profession. Of these the most urgent calls for the bestowal of his best thought in devising and energy in executing plans for the relief of those who are to be his successors—relief from the impediments which have obstructed his own progress, so that his successors shall be better equipped for their work.

An error which largely retards the advance of legal education and progress is, it seems to me, the general impression among lawyers and teachers of the law that we need to study no other system than that of the common law. Lawyers live too often intellectually in England only, and not in the world. They are provincial, not cosmopolitan. Our legal ideas are founded on the notion that the custom of the people of the southern part of a little island in the North Atlantic ocean have in the past ages, crystalized into rules of action, either actually or potentially, adapted to most, is not all, emergencies. But the American people are not the English people, or of exclusively English descent. Germans, Celts, Scandinavians, Spaniards, Frenchmen, Italians enter into our midst and become American citizens. During the last forty years one-half the population of Ireland has emigrated to these shores, and a still larger number from other nationalities. To-day we are a people, a mixture of races, not unlike that which England presented before the Pict, the Celt, the Saxon, Dane and Norman had fused into one homogeneous nationality. When our people become in like manner homogeneous a century or two hence we shall present to the world a new people, an American people, not an English, Teutonic, Celtic or Scandinavian people—a people of which the basic elements or foundations may be English, as in England they are Saxon, but in which, in the mental characteristic, if not in the physical frame, shall be distinctly traceable lineaments of all its ancestry, not English alone, but of its Scotch, Irish, German, Spanish, French and Italian fathers.

American lawyers, outside of Louisiana and Texas, spend their days poring over books of the common law. Codes of Civil Procedure have been in force for thirty years; still we study Stephen and Chitty on Pleading, and store the memory with the differences between debt and assumpsit, or trespass and case. Our real property law is the product, not of the necessities of the American people, but of the armed knights of the feudal ages, and more than one living widower in more than one American State has been truthfully told by his legal adviser that he has lost his right to an interest in his wife's landed property because of the omission to take actual possession, or for want of birth of living issue of the marriage—rules founded on the supreme importance five hundred years ago, to the "war lord," of fastening upon the husband of his female tenant the duty to equip and follow him to battle.

The lawyer of to-day, who studies in an office only, is set down to Blackstone, Kent, Story, Greenleaf, or some equivalent author; he reads the works of wise men and great jurists of the common law and equity. If he enjoy the advantage of a law school he follows the same general curriculum, modified, perhaps, as is the

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modern fashion, by much conning of cases decided in English law or chancery courts. He passes the two or three years of his pupilage, intellectually speaking, in England, learning not the law—its volume is too great—but where to look for the law when wanted; then masters the statutes of his State, passes an examination, usually perfunctory, occasionally made severe by the desire of practitioners to improve their fellows, or by the hope of limiting competition by diminishing numbers; then hires an office, employes a painter, hangs out a sign and waits for clients. A partnership, or politics, or the press furnishes the means of acquaintance and ambition, and if eminent success attend his labors in after years, this student may become a jurist or a statesman, or both. But he never bursts the swaddling clothes of his legal infancy; never ceases to be insular and English. How can he emancipate himself from the inoculation of prolonged education? He travels forward in time—backward in research. His life is passed in transferring to present vision the landscapes of his legal ancestors—the earth and sky and sea through which his fathers passed, and in endeavoring to make of them his present surroundings. Removed more and more each day to a greater distance from the feudal ages, and the formative period of the common law, he strengthens the lenses of his legal telescope to suit his receding vision, and peers into the remote past, searching for the customs of England to guide the action of his American clients; customs which, fortunately for the world, have passed away; customs of war, not peace; customs of piracy and ransom, not of commerce; customs of the mud road and the bridle path, not the railway; of the wain, not the luggage van or express car; customs of Richard Neville, Earl of Warwick, the king-maker, and of the robber-castle, not of Bolton and Watt and Arkwright, the spinning jenny or the cotton mill; customs of the wars of the Roses, not of the deliverances of the American and French Revolutions. He reads a rule originating before bills of lading or exceptions in bills of lading were heard of, founded on the probability that the waggoner, who slowly dragged his toilsome way from London to York, was likely to be either the ally or the prey of Robin Hood and his successors, and therefore bound to pay, in case of damage done by any but God and the king's enemies, to the extent of the value of the goods intrusted to him, and he applies it to the lightning train, whose protection is eternal vigilance, not against robbers, but to avoid disasters from negligence; dangers from eyes that are color blind, from memory which forgets to open or close a switch, from greed that has delivered brittle rails, from carelessness which has overlooked rotten ties. He reads a rule of commerce adopted into the common law of England as a usage of the merchants of London, made when there were more corsairs afloat than honest tars; when conflict was the normal condition of men and ships, as well as of tides and of winds and waves, and applies it to a time when man has learned that his greatest glory is to subdue rebellious nature in the interest of peaceful commerce, when the swift-winged *Etruria* passes from Liverpool to New York within a week, with no other foes than those which can only delay, and they fog and tempest, not the wrath of man. To such a student the customs of civilized empires, the wise ordinances which govern the relations of men in hemispheres, left to posterity by masters of the law who studied the necessities of mankind, not in a barbarous island, inhabited by mail-clad nobles and serfs, but at the very center of the then civilized world, are a sealed book. France and Germany and Italy and Spain and Scotland, South America and Mexico, even Louisiana and Texas, are not on his intellectual map; these are to him undiscovered continents, waiting the revelation of some legal Columbus. The Institutes and the Digest of Tribonian and his associates, the Partidas of the wise Alfonso have no place in his library. Gaius and Ulpian, and Pabinian and Montesquieu, Savigny and Von Ihering are to him names without meaning. None of these apostles has written a gospel or an epistle of the law to him. His learning is of Coke upon Littleton and Sheppard's Touchstone, and Comyn's and Cruise's Digests, and Buller's Nisi Prius. His Bacon wrote the Abridgment, not the Maxims. His model judge is Holt, who scoffed at the negotiability of promissory notes, and said that "the continuing to declare upon these notes upon the custom of merchants proceeded from obstinacy and opinionativeness." Like Lord Wensleydale, he finds all the law worth knowing in the volumes of Meeson and Welsby, of which it has been said by English lawyers that if each decision recorded in the sixteen volumes had been just the other way, the cause of justice, the interests of litigants and of the community would have been just as well off. He shakes his head ominously when Lord Mansfield is mentioned. This was an unsound Scotchman who passed his youth in the study of the civil law, not a level-headed, common-law lawyer like Buller or Kenyon. He tells of Brougham that "if he had known a little law he would have known a little of every thing."

There is very much in the environment of such a student and lawyer to justify the provincial character of his thoughts. His training has been like that of the Flathead Indians—it has compressed his brain with common-law bandages, even to the extent that the eyes of his legal mind have become inverted, and look only backwards. His daily reading confirms his first impressions. To him law is a set of rules founded on the customs of his English ancestry, divisible into two classes—one for which reasons either never existed, or have been forgotten; the other for which the reasons were the result of the fashions of a people whose sympathy with his fathers was so little that they drove his ancestors into the wilderness to found a State upon broader principles than any of them cherished, and with larger fruition than any of which, either prosecutors or exiles, dreamed.

He reads in the current reports, for example, in the ninety-second volume of the reported decisions of the Court of Appeals of New York, anno Domini 1883, the case of Bertles *vs.* Nunan, 92 N. Y., 165, in which the question was whether under a conveyance to husband and wife jointly, they take as tenants in common or as joint tenants, in which it was decided that

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they held as tenants by the entirety, so that upon the death of either the survivor took the whole estate; and he reads in the opinion that "it is said that the reason upon which the common-law rule under consideration was based has ceased to exist, and hence that the rule should be held to disappear. It is impossible now to determine how the rule in the remote past obtained a footing, or upon what reason it was based, and hence it is impossible now to say that the reason, whatever it was, has entirely ceased to exist. There are many rules appertaining to the ownership of real property originating in the feudal ages, for the existence of which the reason does not now exist, or is not discernible, and yet on that account courts are not authorized to disregard them. They must remain until the Legislature abrogates or changes them, like statutes founded upon no reason, or upon reasons that have ceased to operate."

He learns by reading the case of Livingston *vs.* Greene, 52 N. Y., 123, that the law favors vested rather than contingent remainders. The Court of Appeals tells him that "this was so at common law for a reason that has long ceased to exist in this State. The reason was, that if contingent, it was in the power of the life-estate man to defeat the remainder by a fine or a feoffment. But the rule seems still to prevail."

If the spirit of any departed be ever permitted to hover about the home of his life, it must afford him scant comfort to learn that the construction of the testamentary dispositions which he intended for the benefit of his family have been thwarted by the ignorance or unskilfullness of a draughtsman, whose mind was not at the hour of its preparation pressed by the necessity of remembering that it was once the law of England that an estate in contingent remainder was liable to be cut off by fine or feoffment, and that though fines and feoffments have not been used or have been long disused on this side of the Atlantic, the rule founded on their English existence has emigrated hither, and flourishes in perennial vigor, having left the impedimentum of the reason for its existence beyond the waves on the mother soil.

The student finds in Coke upon Littleton the maxim "*cessante ratione, cessat ipsa lex*," and he fancies that this provides for the national adaptation of the common law to the exigencies of new institutions and a growing people, so that there may ever be new bottles for the new wines.

But experience will teach him that the maxin is one of application, not abrogation, more honored in the breach than in the observance, and the chance is that in his professional career he will meet a multitude of instances in which a rule once fixed, with, without, or even against, reason, will be held to be as inflexible as the unbending mandate of a statute.

One of the wisest and most justly eminent of living lawyers has idealized the office of the common law in these words:

"The unwritten law bound by no form of words in dealing with any novel conditions of fact which the variety of human affairs presents, can address itself without embarrassment to the simple office of applying the standard of justice to the particular case."

When I first saw this sentence it seemed familiar. I searched for it in Moore's Utopia and Bacon's New Atlantis, and Campanella's City of the Sun, but failed to find it in any accessible work descriptive of any ideal or real Commonwealth. Its author is not to be accused of plagiarism. Yet I seemed to hear the echo of something I had read, of which this passage from an incisive attack upon codification reminded me. I found it at last by searching diligently in the writings of Alexander Pope, who in the imaginary case of Stradling *vs.* Stiles, in the reports of Martinus Scriblerus, where the question was, what was given by a legacy of "all my black and white horses," the testator being the owner at the time of six black, six white and six pyed horses, puts these words into the mouth of one of the advocates. "And this is another strong argument in law, *Nihil, quod est contra rationem, est licitum;* for reason is the life of the law, nay the common law is nothing but reason; which is to be understood of artificial perfection and reason gotten by long study, and not of man's natural reason, for *nemo nascitur artifex*, and legal reason *est summa ratio;* and, therefore, if all the reason that is dispersed into so many different heads were united into one he could not make such a law as the law of England; because by many successions of ages it has been fixed and refixed by grave and learned men; so that the old rule may be verified in it: *Neminen oportet esse legibus sapentiorem.*"

Side by side the comic of the last century and the serious argument of the present thus reach the same conclusion, that the common law is the perfection of wisdom. But the serious argument now made deserves a serious answer. The idea that the unwritten law can address itself without embarrassment to the simple office of applying the standard of justice to the particular case, because it is bound by no rigid form of words in dealing with novel conditions of facts presented by the variety of human affairs, attributes to courts and judges, in dealing with past transactions, the freedom with which legislators act in framing rules for the future. The simple office of applying the standard of justice to the particular case is not attempted by any tribunal know among men. It could not be, except by judges selected from the wisest and most learned of mankind, who should unite the omnipotence of the British Parliament with the wisdom and freedom from restraint in adopting novel remedies exercised by King Solomon. But judges in fact ask themselves in each case "What is the *established* law of this case?" not "What does justice require between these litigants?"

The daily experience in every lawyer's life proves the untruth of this theory. Even if he see clearly and may safely claim that a decision in his favor will not only establish justice between the parties, but also furnish a wide precedent for the guidance and control of others, he has made little progress toward success. But if he can find a case in point he is happy. To know that his client is in the right may comfort him in defeat, but to find a case in point is a step toward success. While it may be admitted that this is partly because the wisdom of the fathers is usually safe guidance for their sons, yet the principal reason why the lawyer who finds a precedent has a right to be happy is

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founded on considerations not relating to the character of the precedent. Be the precedent ever so wise or ever so foolish, nevertheless it is a precedent, and the conservativeness of the profession and the natural indolence of man combine to induce the judge to follow. Every lawyer who has ever undertaken to combat an unwise or foolish precedent, of which there are many, knows how difficult is the task. It is true there are many overruled cases. They are published in volumes. Yet I venture to assert that the cases which ought to be overruled, or are not worth following, exceed in number those that have reached that just distinction. The consequence is that the devotees of our profession are converted into antiquaries, whose never ending task is to pore over the records of the past, in the hope of discovering that once at least before the date of research legal history had recorded an example of similar contention, whose results might relieve from the duty of considering the consequences to follow independent thought, and might relegate to the easy, lazy task of imitation and copy.

It would puzzle the legal master whose words I have quoted to point to a single instance in which the common law, unaided by legislation, has dealt with novel conditions, either easily or wisely. Surely he would not refer to the decisions upon railroad wages and supply claims, or to the rules so widely variant in different jurisdictions, that "*respondeat superior*" does not apply to servants in what is called common employment.

To those who assume that all wisdom is buried in the records of antiquity these suggestions will seem but folly; but to those who, with me, believe that the world is wiser and better today than ever before, and that we should be as hopeful of the future as certain of the present, I submit them with the belief and in the hope that they may find acceptance.

The case hunter is in one sense a student. He rumages among the records of the past, and brings to light the history of rules. No one can over estimate the value of historical research. But the case lawyer, in using historic examples as patterns on which to fashion, or moulds into which to run, the conduct of our present and future lives, is trying to turn time backward and arrest the progress of man. This *tunc pro nunc* process helps the indolent rather than the just. The real student of legal history reads it with eyes open to the faults as well as to the merits of the past, while the case hunter assumes (it is the rule of his life) that results once reported by judicial tribunals are not only of permanent value (this may be safely admitted), but are entitled to continuing control. A case in point once found, excludes all argument to the contrary, and the only appeal is to the Legislature, and this of course without benefit to the suitors in pending controversies.

The consequence is a constant and almost, if not quite, insuperable tendency on the part of courts against legal progress. With the face of inquiry turned backward, how can forward motion be expected? The wisest and best of our numbers, who fortunately, as a rule at least, are still called to judicial station, are daily and hourly employed to treat what has been achieved as sufficient, are admonished that to seek improvement is to abdicate proper judicial functions, is not to expound, but to make law. We have been so often warned against "judge-made law" that this has become a phrase, not descriptive of what is best, as it really should be, but the worst in our jurisprudence.

It is an idle thought, perhaps a mere dream, to think of an Utopia in which the judges shall make the laws, and to the General Assembly, or some other tribunal, be committed the inferior task of construing them. And yet what worthy man or nation ever yet existed without its dream, its hope, its golden city, its Jerusalem, its Utopia? Let us, therefore, strive for what we may perhaps know we can in our own lives never attain, the elevation of the dignity of the Legislature, so that there shall be as much confidence in the wisdom given to the making of our laws as is justly now bestowed in the construction by the judiciary.

The habitual methods of our profession, our clinging to the past and shrinking from the future (politely called conservatism), our daily quest of the old and dread of the new, involve two serious evils not always sufficiently considered. First, no important step of reform is ever, can ever, be taken by courts except at the expense, not of the community, but of litigants. The client sails, like Jason, in quest of the golden fleece. The lawyer fancies that it is to be found in the fortunate land where stands the temple of the blind goddess, but these journeys are prosecuted, not by the State, but by individuals.

The modern Jason is not sent by the community in Ships of State, but in a craft of his own. He at least pays the bills of the voyage. And secondly, legal reforms of to-day, achieved through the *media* of judicial decisions are always *post facto*. Yet if there be any duty incumbent on the State, on the corporate community, and from which the individual ought to be relieved, it is that of prescribing the rules of conduct in advance, so that one may beforehand know, with as much certainty as human fallibility can secure him, what will be the legal consequences of his future action.

Society provides its ample equipment of judges, of court after court, peak rising above peak, each climbed with time and toil, till the ascent be completed, and the oracle which (presumably) never errs, is heard from the temple of justice situated on the summit, speaking the infallible judgment of the court of last resort. The expense to the suitor is vast, the delay is costly, sometimes ruinous: to the community it is a trifle. In nine cases out of ten the parties on both sides, and their counsel, differ honestly. It is only in the very smallest minority of civil cases that malice or greed provokes the conflict. The idea that there can be but one right side to a cause forgets that men have fallible judgments, and ascribes to them the prerogative of omniscient Divinity. Admitting then, that absolute certainty is, on this side of death, out of the question, still it may be asked why does not society seek to solve legal problems, to state legal rules definitely and before the event, instead of informing parties afterward, and why require them to solve their honest differences by resort to the costly paraphernalia of individual employment of counsel, study, search for precedents and search for witnesses.

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The result is practically that individuals provide laws for the community, not the community for individuals, and this they do to the loss of both the contending litigants, to the injury, if not ruin, of one, and ordinarily to the gain of no one, unless it be of the gentlemen composing what John Stuart Mill calls the "enormously overpaid" profession of the law.

The "simple office," as it has been called, of applying the standard of justice to the particular case, the very difficult function, as I believe it to be, of ascertaining the rules of the unwritten law applicable to legal controversies, consists in the exposition and application of precepts which are supposed to be already somewhere in existence. The judge who with or "without embarrassment" should simply apply "the standard of justice to the particular case," would soon find himself exposed to impeachment. For first, his sagacity might not suffice to enable him to discern the "standard of justice" applicable to the particular case; and secondly, the office of judgment, its essential characteristics, is exposition, declaration, application, not prevision. It assumes that there already exists a relevant rule of law applicable to the case, decisive between the parties; that these parties knew it; that they have therefore no excuse for its disobedience. The result of every case must, therefore, be measured and determined, not by considerations of "justice," but by rules either formulated or reducible to *formulæ* by analogies founded on rules already formulated.

The problem to which the judicial mind applies itself is not what judgment will most benefit these parties or the community, nor what will be most consonant to justice, but what is most nearly in analogy to—most readily derivable from legal provisions previously ascertained. The question the judge asks himself is: "What direction does the existing law require me to give this case?" "In what path does the inexorable law of *stare decisis* compel my feet to travel?" No doubt it is pleasing to every judge to find that his conclusions coincide with and gratify his sense of justice, but they are never, or at least rarely, provoked by it. His sense of justice and his performance of duty ride side by side, perhaps exchanging glances of friendship, if not love. But justice does not hold the bridle or prescribe the path. This cannot be, from the very necessities of the judicial path itself, for it is a road in which the guide-board is behind the rider, and he must either sit with his face to the tail, or constantly look backward, to see which way his fathers in the law warned him to travel. This is the position inevitably impressed by the laws of two important avocations in life, viz., of rowing and of judicial judgment. Each new statement of a rule is founded on a prior statement, not evoked by considerations of present justice, and in turn each earlier rule sprung from something behind it.

In searching for the fountains of the unwritten law we never reach a time when the "simple office of applying the standard of justice" was in use by any one, unless this be found in the earlier ages of English jurisprudence, when the king's writ was sought from the king in person.

[To be continued.]

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

MARY E. HILL
vs.
ENOCH M. LOWE *et al.*

Decided May 28, 1888.

Where a loss must fall on one of two innocent parties, the one whose neglect or lack of foresight made the loss possible must bear the burden.

Appeal from a decree in equity vacating certain conveyances on the ground of fraud.

The facts are sufficiently stated in the opinion.

JOSEPH SHILLINGTON for complainant.

H. O. & R. CLAUGHTON for defendants.

MR. JUSTICE COX delivered the opinion of the Court:

In the case of Mary E. Hill *vs.* Enoch M. Lowe, Henry M. Baker, George A. Woolley and Samuel F. Merrill, the facts seem to be as follows:

One Frank P. Hill, the husband, now deceased, of the complainant, was, in 1877, the owner of parts of lots 1 and 2 in square south of square 1036 in the City of Washington. In that year he conveyed the lots for a nominal consideration of $2,000 to one McIntire by an absolute deed, but it was in fact upon a secret trust to hold the property and to dispose of it according to the directions of Hill. Afterwards, by Hill's direction, McIntire conveyed it to a man named Clark, and Clark again, in turn conveyed to Hill himself, by Hill's direction. The first deed from Hill to McIntire, was put on record. The other two deeds were not recorded. Then came the consequence that we have seen so often, in this Court, that the party holding the legal title defrauded somebody by conveying it to someone else than the party entitled.

While the title was in this condition, Hill died, after having made a will devising all his property to his wife. The deeds from McIntire to Clark and from Clark back to Hill seem to have been lost for a long time, and never to have turned up until long after certain events of which I have now to speak.

Some time after Hill's death, Lowe, one of the defendants, a real estate agent, made a sale to Woolley, another of the defendants, of some land adjoining the property I have just described, and when that sale was completed Wooley inquired of Lowe if he knew who owned the title to the property in question, remarking "I would like to buy that if I could get a good title." Thereupon, Lowe set himself to work to ascertain who was the owner of the property; he found that McIntire had the legal title on record, but, in some way, he was brought into communication with Clark who had conveyed the property back to Hill and also Mr. H. E. Davis, the attorney for the complainant, and was informed by both of them that McIntire had conveyed it back to Hill. He also entered into communication with the complainant, who resided in Baltimore, and sent somebody to interview her and heard the same facts from her. She made search for the deeds and did not find them. After re-

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peated searches, she was unable to find them. Mr. Davis also made an unsuccessful search among his papers for these deeds. Six months elapsed, and Lowe opened correspondence with McIntire who resided in the north, and was informed by him that he really was the owner, and he denied the ownership of everybody else, and thereupon Lowe purchased the property of McIntire for $500 and had him convey the land to Cockerille, and then had Cockerille convey the land to Woolley for $900 and he pocketed the difference. Woolley afterwards gave a deed of trust to secure the other defendant, Merrill, for a sum of money borrowed from him.

The bill charges that Lowe, in buying this land from McIntire and in negotiating with the complainant, was the agent of Woolley, and that being advised of the condition of the title by the complainant, his knowledge is to be imputed to Woolley. It charges that all of these parties entered into a conspiracy to defraud and cheat the complainant out of her property and asks that the conveyances be vacated and the property reconveyed.

Lowe, in his answer, denies that he acted as agent for Woolley at all. He admits he was fully informed of the claims of the complainant, but he says that they made repeated searches for the deeds and he did not believe they had any deeds at all; and that when he communicated with McIntire, the latter claimed to be the owner, and wrote him letters in which he denied the ownership of anybody else. He produces the letters. He says he got the property from McIntire on his own account only, and not as the agent for Woolley, for $500, and he had it conveyed to Cockerille because he did not wish Woolley to see the consideration of $500 in McIntire's deed, as he meant to charge him a good deal more, and then he sold to Woolley for $900 and got Cockerille to convey to him, and he pocketed the difference of $400.

Woolley, also, denies that Lowe was his agent; says he had no knowledge whatever of his transactions or of the claims of the complainant, and produces a written agreement of sale between Lowe and Kintz and himself, in which they describe themselves as the agents of Cockerille and deal with him as a stranger.

Merrill, the other defendant, professes to be a purchaser in good faith, who loaned this money and took a deed of trust.

The justice at special term was satisfied, from the evidence, that Lowe was the agent of Woolley, and that Woolley therefore was to be charged with Lowe's information as to the claims of the complainant upon the property. He held that Merrill, however, who took the deed of trust from Woolley, ought to be protected; but that the deed from McIntire to Cockerille and Woolley ought to be set aside.

We have not been able to concur with the justice holding the special term in that conclusion. There is nothing in the case whatever to impugn the entire good faith of Woolley. It is obvious that he purchased this property without any notice of the defect of title, and he paid full value, $900. There is nothing to cast suspicion upon his good faith or to show that he had any knowledge whatever of Lowe's transactions or of the price Lowe was to pay. The The loss must fall on Woolley or on the complainant. This loss was occasioned by the neglect of the complainant's husband, under whom she claims, to put these deeds on record. The consequence was, that by reason of that neglect it was put in the power of McIntire to pass to Woolley a complete record title. It would, therefore, seem to be a plain case for the application of the well known rule that if a loss is to fall on one of two innocent parties, the one whose neglect or lack of foresight made the loss possible is the one who must bear the burden.

It is claimed that, as notice to the agent is notice to the principal, and as Lowe was the agent of Woolley, Woolley is therefore to be charged with that notice and to suffer the consequences. We do not think the evidence makes out a case of agency at all. The whole of this theory of agency is founded upon a casual expression made use of by Woolley. Lowe said: "I was selling Mr. Woolley a piece of property adjoining it at the time, and after he got that piece he said, 'Do you know who that piece belongs to?' (Meaning the piece in controversy) and I said that I did not; and he said, 'I would buy that piece if I can get it at a fair price."

On that casual expression the whole theory is founded that Lowe was the agent of Woolley in making inquires about this property and carrying out the sale to Woolley. It seems to us that all of this is perfectly consistent with the idea that if Lowe would ascertain the owner and get his authority to sell, Woolley would buy from Lowe or from the owner through Lowe. It does not appear that Lowe expected to get any compensation from Woolley for the work of buying the property or that Woolley expected to pay him anything. The fair presumption would be that in this, as in all the ordinary course of dealings by real estate agents, the agent expected to get his compensation, in the shape of a commission, from the owner and not from the purchaser, or expected to get his compensation in a purchase on his own account and a resale of the property at an advance. At all events, it would be a pretty hard case that Woolley, who paid the full value of the property in entire ignorance, as far as appears, of any defect in the title, should lose that money, unless the agency is made perfectly clear. In a case of doubt, the presumption ought to be in favor of the party who acted in good faith, and had no actual knowledge of the defect in the title.

We are not satisfied that there was any case of agency. We are rather satisfied the other way. We think that Mr. Woolley ought to be protected, as a bona fide purchaser without notice, and that the decree below ought to be reversed, and the bill dismissed.

INDICTMENT charging that defendant suborned an unknown person pretending to be a certain party, who took the oath administered by the register of the local land office, said person not believing same to be true, as defendant then and there knew, and that she took the oath not believing it to be true which defendant knew, and setting out the substance of the affidavit and wherein it was false, is sufficient. Babcock *vs.* United States, U. S. C. C., D. Colo., May 5, 1888.

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SUPREME JUDICIAL COURT OF MAINE.

HENRY J. FOWLER *et al.*
vs.
WESTERN UNION TELEGRAPH CO.

1. A stipulation, in the printed directions to send a night message, "that the sender will agree that he will not claim damages for errors or delays, or for non-delivery of such message, happening from any cause, beyond a sum," etc., although assented to by sender, is void as against public policy.
2. Telegraph companies do not insure absolutely the safe and accurate transmission of messages, as against all contingencies; but they are bound to transmit them with care and diligence adequate to the business they undertake.
3. A telegraph company is not liable for the non-delivery of a night message which was destroyed by fire at a repeating station, without the fault of the company.
4. In an action for damages occasioned by a failure to transmit and deliver a telegraph message, the plaintiff makes out a *prima facie* case by showing the fact of a non-delivery of the message, and consequent loss. The burden is then upon the company to show that the failure to deliver was caused by some agency for which it was not responsible and is not liable.

ON report.

AN ACTION to recover damages for failure to transmit and deliver a night telegraph message.

THE FACTS are fully stated in the opinion.

FOSTER, J., delivered the opinion of the Court:

This case comes up on report. It appears that on the evening of August 20, 1883, the plaintiffs, whose business is that of pork packing, delivered to the defendant's agent at Portland, for transmission and delivery, the following night message:

"PORTLAND, *Aug.* 20, 1883.

"To H. F. GOOGINS,
"*Union Stock Yards, Ill.*

"Ship one car hogs to-morrow.
"THOMPSON, FOWLER & Co."

The message never having been delivered by the defendant, this action is sought to recover damages alleged to have been sustained in consequence.

In defense of the action the defendant introduced evidence, and established the following facts:.

At the Union Stock Yards, which are about six miles from Chicago, the defendant company had only a day office—open from half-past six in the morning till ten o'clock in the evening. Night messages directed to the stock yards, received at the Chicago office during the night, were necessarily kept in that office until after the opening of the office at the stock yards on the following morning. This despatch was received at the Chicago office during the night of August 20-21, and the copy was hung upon what was called the stock yards hook, in the operating room, awaiting the opening of the office at that place on the morning of the 21st. About thirty minutes past six that morning, and immediately prior to the opening of the stock yards office, a fire suddenly broke out in the operating room of the Chicago office, and spread with such rapidity that nothing could be saved from the room; and this copy, together with everything in the room, was destroyed.

The fire was first discovered in this room upon the back of the "switchboard," where it is covered with numerous wires necessarily running very close to each other; and was caused by the crossing of several wires charged with large batteries. This crossing resulted from atmospheric conditions, the moisture accumulating on the back of the switchboard forming a partial connection between the wires and acting as a partial conductor, thereby causing the electric current to leave its proper course, with the result as above stated.

That such accidents are exceedingly rare is not disputed, and that there are no improvements known to the art, or anywhere in use, by which the possibility of such an occurrence can be prevented.

In consequence of this fire it became impossible for the defendant to deliver the plaintiffs' message.

This message delivered to the company was written upon a night message blank, and, after stipulating that the company would receive messages to be sent, without repetition, during the night, for delivery not earlier than the morning of the next ensuing business day, at reduced rates, there followed this condition:

"That the sender will agree that he will not claim damages for errors or delays, or for non-delivery of such messages, happening from any cause, beyond a sum equal to ten times the amount paid for transmission," etc.

Above the written message were these words: "Send the following night message, subject to the above conditions, which are hereby agreed to."

No evidence was offered at the trial, or question raised, in reference to the stipulations and condition, further than what appears upon the message blank signed at the bottom of the message. Nor is any question raised by counsel in argument before this Court in relation to the validity of such a condition as is found attached to this stipulation or agreement. By its very terms, if held valid, this condition would relieve the company from all liability whatsoever for errors, delays or omissions, "happening from any cause." It would protect it from all liability happening as the result of its own negligence. Whatever force or effect other courts may give to such conditions, whether as a regulation of the company or as a contract between the parties, it is now too well settled by this Court to admit of question or contradiction, that they are unreasonable and void. Bartlett *vs.* Western Union Teleg. Co., 62 Me., 209; True *vs.* International Teleg. Co., 60 Me., 9; Ayer *vs.* Western Union Teleg. Co., New Eng. Rep., 784, 79 Me., 493.

As in the case of common carriers, they cannot contract with their employers for exemption from liability for the consequences of their own negligence. Whether such conditions are reasonable or unreasonable must be determined with reference to public policy rather than private contract. Southern Exp. Co. *vs.* Caldwell, 88 U. S., 21 Wall, 270.

The defense, however, is based entirely upon other grounds. No conditions contained in the

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stipulation are relied upon as a defense in this action. But it is claimed that under the facts in the case, concerning which there is no controversy, the defendant company cannot be deemed guilty of any negligence, and therefore cannot be held to respond in damages. To ascertain the duties and liabilities of the defendant company we must look to the nature of the employment, and, except so far as it has limited its ordinary obligations by any special stipulations which may be held to be reasonable, be governed by the general and well established principles of law pertaining to such employment.

It is now perfectly well settled by the great weight of judicial authority, that although telegraph companies are engaged in what may appropriately be termed a public employment, and are therefore bound to transmit, for all persons, messages presented to them for that purpose, they are not common carriers in the strict sense of the term. To be sure, they are engaged in a business almost, if not quite, as important to the public as that of carriers. But while the analogy between the common carrier of goods and common carrier of messages is very strong, nevertheless their responsibility differs in a manner corresponding to the difference in the nature of the services they perform. The common carrier of goods, in the absence of any special contract or regulation limiting its general liability, becomes an insurer of property entrusted to it for carriage; whereas, in the absence of any contract or regulation modifying the liability of telegraph companies, they do not insure absolutely the safe and accurate transmission of messages, as against all contingencies; but they are bound to transmit them with care and diligence adequate to the business which they undertake, and for any failure in such care and diligence they become responsible. This appears to be the doctrine now settled by the courts, and is founded upon reason. The following decisions in this country are authority, and may properly be cited in this connection: Bartlett *vs.* Western Union Teleg. Co., 62 Me., 220, 221; Ayer *vs.* Western Union Teleg. Co., 4 New Eng. Rep., 784, 79 Me., 493; Ellis *vs.* American Teleg. Co., 13 Allen, 232—which hold them to the use of due and reasonable care and liable for the consequences of their negligence in the conduct of their business to those sustaining loss or damage thereby; Bress *vs.* United States Teleg. Co., 48 N. Y., 141; Leonard *vs.* New York A. & B. Teleg. Co., 41 N. Y., 571; Baldwin *vs.* United States Teleg. Co., 45 N. Y., 751; De Rutte *vs.* New York, A. & B. Teleg. Co., 1 Daly, 547; New York and W. P. Teleg. Co. *vs.* Dryburg, 35 Pa., 298; Western Union Teleg. Co. *vs.* Graham, 1 Col., 230; Sweatland *vs.* Illinois & M. Teleg. Co., 27 Iowa., 433; Western Union Teleg Co. *vs.* Carew, 15 Mich., 525; Western Union Teleg. Co. *vs.* Neill, 57 Tex., 283; Washington & N. O. Teleg. Co. *vs.* Hobson, 15 Gratt., 122; Pinckney *vs.* Western Union Teleg. Co., 19 S. C., 71; Smithson *vs.* United States Teleg. Co., 29 Md., 167; Little Rock F. D. Teleg. Co. *vs.* Davis, 41 Ark., 79.

A more stringent rule, however, was at first suggested in two early cases. The earliest one in which the question of the liability of telegraph companies arose was that of MacAndrew *vs.* Electric Teleg. Co., 17 C. B. (84 E. C. L., 3), decided in England in 1855. This case, by implication, can only be said to be authority for holding them to the liability of insurers. It was soon followed in this country by the case of Parks *vs.* Alta California Teleg. Co., 13 Cal., 422, decided in 1859—the only case to be found in which the telegraph companies have been expressly held to be common carriers and subject to the same severe rule of responsibility. With this exception, all the American courts which have expressed any decided opinion upon this question have concurred in the doctrine above stated.

The decree of care which these companies are bound to use is to be measured with reference to the kind of business in which they are engaged. As compared with many other kinds of business, the care required of them might be called "great care." While meaning really the same, it is variously stated by different courts in the decisions to which we have referred: "Due and reasonable care;" "ordinary care and vigilance;" "reasonable and proper care;" "reasonable degree of care and diligence;" "care and diligence adequate to the business which they undertake;" "with skill, with care and with attention;" "a high degree of responsibility." These are but the varied forms of expressing the requirement of what is known in law as ordinary care, as applied to an employment of this nature—an employment which is not that of an ordinary bailee. The public, as a general rule, has no choice in the selection of the company. It has none in the selection of its servants or agents. It has no control over the agencies or instrumentalities used in conducting the business of the company. The public must take the agencies which the companies furnish, and it has no supervision over their their management or methods of performing the service which they hold themselves out as willing and ready to perform. And while we do not hold that these companies are common carriers, and subject to the same severe rule of responsibility, we think that those who engage in the business of thus serving the public by transmitting messages should be held to a high degree of diligence, skill and care, and should be responsible for any negligence or unfaithfulness in the performance of their duties.

A telegraph company which holds itself out to the public as ready to transmit all messages delivered to it is bound to have suitable instruments and competent servants, and to see that the service is rendered with that degree of care and skill which the peculiar nature of the undertaking requires. We do not understand, however, that this duty would impose a liability upon the company for want of skill or knowledge not reasonably attainable in the art; nor for errors or imperfections which arise from causes not within its control, or which are not capable of being guarded against. White *vs.* Western Union Teleg. Co., 14 Fed. Rep., 710; Sweatland *vs.* Illinois & M. Teleg. Co., 27 Iowa, 433; Leonard *vs.* New York, A. & B. Teleg. Co., 41 N. Y., 572; Ellis *vs.* American Teleg. Co., 13 Allen, 233; Bartlett *vs.* Western Union Teleg. Co., 62 Me., 221.

We think our own court has expressed the doctrine we are discussing, in language so fit-

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ting that we may be justified in making the following extended quotation from the case last cited: "To require a degree of care and skill commensurate with the importance of the trust reposed is in accordance with the principles of law applicable to all undertakings of whatever kind, whether professional, mechanical, or that of the common laborer. There is no reason why the business of sending messages by telegraph should be made an exception to the general rule. This requires skill as well as care. If the work is difficult, greater skill is required. It is often necessary to trust to this mode of communication matters of great moment, and therefore the law requires great care. It is necessary to use instruments of a somewhat delicate nature and accurate adjustment, and therefore they must be so made as to be reasonably sufficient for the purpose. The company holding itself out to the public as ready and willing to transmit messages by this means pledges to that public the use of instruments proper for the purpose, and that degree of skill and care adequate to accomplish the object proposed. In case of failure in any of these respects, the company would undoubtedly be liable for the damage resulting. This would not impose any liability for want of skill or knowledge not reasonably attainable in the present state of the art; nor for errors resulting from the peculiar and unknown condition of the atmosphere or any agency, from whatever source, which the degree of skill and care spoken of is insufficient to guard against or avoid."

Taking the facts as proved in the case now under consideration, and applying the principles of law to them, are the plaintiffs entitled to recover?

They make out a *prima facie* case when they show that the message which the company undertook to send was not delivered, and that damage has resulted. It is not necessary that they show affirmatively that the failure to deliver happened through any omission of duty by the company or its officers, or from some defect in the instrumentalities employed by the company. The failure to deliver being shown, the legal presumption is that it was caused by some one or other of these causes, or of all combined. It then becomes incumbent on the defendant, if it would relieve itself from the consequences of such presumption, to overcome that presumption by showing that, in the attempted transmission and delivery of the message, it exercised all proper care and diligence commensurate with the undertaking, and that the failure is not attributable to any fault or negligence on its part or that of any of its employees. Bartlett *vs.* Western Union Teleg. Co., 62 Me., 221; Baldwin *vs.* United States Teleg. Co., 45 N. Y., 744; Western Union Teleg. Co. *vs.* Graham, 1 Col., 230; Shearm. & Redf. Neg., sec. 559; United States Teleg. Co. *vs.* Wenger, 55 Pa., 262.

The case last named was where a message, sent by the plaintiff's line to New York, was transmitted only to Philadelphia, and no reason was assigned for the failure to transmit the message to its destination. The Court says: "No such reason as the law would recognize, and indeed no reason at all, was given for the failure to transmit the message to its destination. Thus was presented a clear case of gross negligence against the company, in performing its undertaking, and a consequent liability to the plaintiff for such damage as he had sustained in consequence thereof."

The case at bar is unlike that. While it is true that the message in this case was not transmitted to its destination, the defendant here has assumed the burden of proof, after the *prima facie* case of the plaintiffs, and, by evidence which is uncontradicted, has shown that the failure was caused by agencies over which it had no control and for which it was not responsible. The despatch, when received at the Chicago office during the night, was taken from the wire, and the relay copy was hung upon the Stock Yards hook, to be forwarded the following morning, when the office at that place should open. This is all that could be done that night. By the terms of the company's stipulation or regulation, to which the plaintiffs, by their signature thereto, either assented, or by which they must be held to be estopped (Breese *vs.* United States Teleg. Co., 48 N. Y., 141, 142; Grinnell *vs.* Western Union Teleg. Co., 113 Mass., 307)—aside from the void condition of which we have spoken—the message was not to be delivered earlier than the morning of the next ensuing business day. An earlier transmission in this case was impossible. Immediately prior to the time for forwarding the message over the line communicating with the Stock Yards, a fire suddenly broke out in the operating room, and, before anything could be rescued, the whole room was enveloped in flames, and this message destroyed.

The origin of the fire, as we have stated and as the evidence shows, was due to atmospheric conditions and influences over which the defendant company had no control. There were no improvements known, or anywhere in use, which could guard against the possibility of such an occurrence. If the company ought to have foreseen that such an accident might happen, or if such an occurrence could reasonably have been anticipated, and it could have been guarded against, then the omission to provide against it might be held to be actionsble negligence. But the facts, as they appear in the case, rebut any negligence on this ground. That it was likely to occur was only a possibility. The fire does not appear to have originated through any fault or negligence of the company or its employees, or through any imperfections in the chemicals, metals, machinery, or implements used by it, which, by any skill or knowledge reasonably attainable in the present state of telegraphy, could be guarded against.

The facts proved bring the case within the decisions to which we have referred in another part of this opinion, and, upon these facts and the law, it is the opinion of the Court that the plaintiffs cannot prevail.

Judgment for defendant.

PETERS, Chief Justice.

WALTON, DANFORTH, VIRGIN and LIBBEY, JJ., concurred.

One entitled to "net annual income" of stock in corporation, is entitled to dividends on such stock from its surplus earnings. Gilkey *vs.* Paine (Me.), 6 New Eng. Rep., 554.

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THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

September 4.

11317. William H. Davis *vs.* Elizabeth Davis. For divorce. Pltfs atty, C. Roys.

11318. Azariah Denison. Upon petition of the Comissioners of the District of Columbia for inquiry into alleged lunacy. Com. sol., H. E. Davis

11319. James A. McNerhany. Upon petition of same. Inquiry into alleged lunacy. Com. sol., Same.

11320. Julius Hammerslough et al. *vs.* Samuel Bieber et al. Injunction. Com. sols, Worthington & Heald.

11321. Catherine Shedd *vs.* Samuel M. Shedd. For divorce. Com. sol., S. A. Cox.

11322. William A. Wilson *vs.* James B. Halliday. Injunction and receiver, discovery, account and dissolution of partnership. Pltfs atty, Mills Dean.

September 5.

11323. Samuel T. Drury, alleged lunatic. Upon petition of Charles S. Drury *de lunatico inquirendo*. Com. sol., C. Carrington.

11324. Mary Underwood *vs.* Enoch Underwood. For divorce. Com. sol., Same.

11325. Mary A. Collins *vs.* John J. Collins. For divorce. Com. sol., Same.

11326. B. C. Hall et al. *vs.* H. W. Hall et al. To sell part lot. Com. sol., R. W. Baldwin.

CIRCUIT COURT.—New Suits at Law.

September 4.

28928. G. Warren Offutt et al *vs.* Louis B. Dufief. Account, $150.91. Pltfs atty, W. S. Jackson.

28929. Herman Burkhart *vs.* Nathaniel Z. Seltz. Notes, $50. Pltfs atty, T. M. Fields.

28930. Same *vs.* George P. Yost et al. Notes, $125. Pltfs atty, Same.

28931. George Fritsch *vs.* John A. Gray. Judgment of Justice Strider, $32.45.

September 5.

28932. Henrietta L. King *vs.* The District of Columbia. Ejectment, &c. Pltfs attys, Birney & Birney.

28933. R. L. Saunders *vs.* Warren E. Pickrell. Judgment of Justice Buckey, $32. Pltfs atty, W. S. Jackson.

28934. Jacob R. Nyce et al. *vs.* John Lynch. Account, $180.54. Pltfs atty, A. J. Carr.

28935. Same *vs.* James Fitzpatrick. Account, $228.88. Pltfs atty, Same.

28936. Thomas N. Wood et al. *vs.* Austin P. Brown. Note, $4,828.22. Pltfs attys, Lines and Jones.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of September, 1888.

Cordelia E. O'Reilly vs. **Luke O'Reilly.** } No. 11252. Docket 28.

On motion of the plaintiff, by Mr. F. P. B. Sands, her solicitor, it is ordered that the defendant, **Luke O'Reilly**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure a divorce from the bonds of matrimony upon the grounds of willful desertion and abandonment of plaintiff by said defendant for the full and uninterrupted space of two years preceding the date of the filing of the bill of complaint in this cause.

Provided a copy of this order be published once a week for three consecutive weeks prior to said rule-day in the WASHINGTON LAW REPORTER and the *Daily Critic*.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

37 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Samuel Blatchford, Surviving Executor of Richard M. Blatchford, deceased, Plaintiff, vs. **William Sprague**, Defendant. } At Law. No. 19534.

On motion of the plaintiff, by Mr. Walter D. Davidge, his attorney, it is ordered that the defendant cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover against the defendant the sum of $37,857.03, with interest at seven per cent. per annum from the 20th of June, 1876, according to the particulars of demand annexed to the declaration, less the credits of $10,001.32, therein given. The suit is based upon a judgment recovered against the defendant on the 20th of June, 1876 (as one of the surviving partners of Hoyt, Sprague & Co.), in the Supreme Court of the State of New York, in and for the City and County of New York, by reason of the nonperformance of certain promises before that time made by the defendant. It is also based upon a claim for money lent, for money paid, and for money had and received to the use of Richard M. Blatchford, deceased, the testator of plaintiff. It is also based upon an accounting had between the plaintiff and Burr W. Griswold, as executors, and the defendant (impleaded with others), on the 20th of June, 1876, in the Snpreme Court of the State of New York, in and for the City and County of New York, in a suit brought by the Berkshire Woolen Company against Hoyt, Sprague & Co. and others. W. S. COX, J.

Test: R. J. MEIGS, Clerk.

37 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of September, 1888.

Lillian S. Benton vs. **Henry Benton.** } No. 11285. Docket.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendant, **Henry Benton**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce, instituted by the plaintiff, Lillian S. Benton, against the defendant, Henry Benton, on the grounds of desertion of the plaintiff by the defendant for the uninterrupted space of more [than] two years. By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

37 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of September, 1888.

Mary M. A. Gibson vs. **Horatio G. Schissler.** } No. 11240. Docket 28.

On motion of the plaintiff, by Mr. F. P. B. Sands, her solicitor, it is ordered that the defendant, **Horatio G. Schissler**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure perfect title to lot 5 in Wm. M. and W. W. Corcoran's subdivision of parts of tract now called Washington Heights, in the District aforesaid.

Provided a copy of this order be published once a week for three consecutive weeks prior to said rule-day in the WASHINGTON LAW REPORTER and the *Daily Critic*.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

37 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of September, 1888.

William Bresnahan vs. **Margaret O'Connell et al.** } No. 11263. Docket.

On motion of the plaintiff, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, **Sarah McHenry** and **John Small**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to perfect the title to part of lots numbered 11 and 12, in square numbered 559, in Washington City, D.C., and to sell the same for the purpose of partition. By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

37 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

William Muehleisen, Plaintiff, vs. Carl Reesch, Defendant. } No. 28795. Docket.

On motion of the plaintiff, by Mr. W. J. Newton, his attorney, it is ordered that the defendant, Carl Reesch, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject credits of the defendant attached in the hands of August Schwartz to the payment of the debt due by the defendant to the plaintiff.

Provided a copy of this order be published once a week for three successive weeks previous to said rule-day in the WASHINGTON LAW REPORTER and *The Washington Post* newspaper, printed in Washington.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Jane B. Hawkins et al., Plaintiffs, vs. Katharine A. Craig et al., Defendants. } No. 11272. Docket 28.

On motion of the plaintiffs, by Messrs. Carusi & Miller, their solicitors, it is ordered that the defendant, Anna Maria Berlin, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have sale made of all that piece or parcel of ground situate in the City of Washington, in the District of Columbia, known as lot numbered twenty-two (22), in square numbered one hundred and five (105), and the proceeds distributed to the heirs and devisees of Maria B. Craig, deceased, according to the rights of plaintiffs and defendants.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Mary M. Frick vs. H. C. Alleman, Surviving Trustee. } No. 11245. Docket 28.

On motion of the plaintiff, by Mr. W. M. Offley, her attorney, it is ordered that the defendant, H. C. Alleman, Surviving Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure the reappointment of a new trustee in place of H. C. Alleman, Surviving Trustee, to release the deed of trust now outstanding upon lot 21, in S. A. Terry's subdivision of original lot 1, in square 722, in the City of Washington, District of Columbia, the indebtedness secured thereby having been fully paid and satisfied.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of Catharine Bergmann, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of September, 1888.

ROSE KRAEMER,
LOUISE SCHMIDTMANN,
Executrices.

37 No. 3211. Ad. D. 14. Henry Wise Garnett, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nicola Pistorio, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of September, 1888.

FRANK D. PISTORIO, Adm'r.

37 No. 3209. Ad. D. 14. E. B. Hay, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 7th, 1888.

In the case of Jesse H. Wilson and W. Riley Deeble, Executors of James W. Deeble, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 28th day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

37 No. 2824. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 7th, 1888.

In the matter of the Estate of John Fischer, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Leon Tobriner.

All persons interested are hereby notified to appear in this Court on Friday, the 5th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
37 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1888.

Louisa Cooper vs. John H. Cooper et al. } No. 11145. Eq. Docket 28.

On motion of the plaintiff, by Mr. James W. Greer, her solicitor, it is ordered that the defendants, John H. Cooper, Isaac Cooper and William Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure reimbursement out of the proceeds of sale of certain real estate which belonged to Lysander Cooper, late of said District, deceased, of moneys paid out by complainant for taxes on said real estate, and in settlement of debts due by said deceased.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
37 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William W. Curtis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of September, 1888.

CHARLES W. CURTIS, Ex'r,
1401 31st st. n. w., Washington, D. C.

37 Jno. B. Thompson, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Hester A. Clements**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of August, 1888.

EDMUND CLEMENTS, Ex'r, 1016 8th st. n. w.

36 No. 3201. Ad. D. 14. Jos. Shillington, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 30th, 1888.

In the case of Charles E. Sutherland, Executor of **Jane Brennan**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 21st day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

36 No. 2765. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Lehnert**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1888.

PHILIPPINA LEHNERT, Ex'x,
1217 New Hampshire ave.

36 No. 3205. Ad. D. 14. Ferd. Schmidt, Proctor.

IN JUSTICE COURT OF THE DISTRICT OF COLUMBIA.
BEFORE CHARLES WALTER, ESQ.

The 31st day of August, 1888.

William H. Clagett vs. **Pembroke Marshall.** } No. 14038.

On motion of the plaintiff, by Mr. Duhamel, his solicitor, it is ordered that the defendant, **Pembroke Marshall**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce the landlord's lien upon the goods of defendant for rent due.

By the Court. CHARLES WALTER, Justice, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court.

The 4th day of September, A. D. 1888.

Daniel Pratt Wright, Complainant, vs. **Emma C. Wright et al.**, Defendants. } No. 10308. Equity Doc. 26.

Ordered that the sale made and this day reported by Reginald Fendall, Trustee in this cause, be ratified and confirmed, unless cause to to the contrary be shown on or before the 4th day of October next.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once in each of three successive weeks before said last-named day.

Said trustee states in his report that he has sold, at private sale, part of lot three (3), in square four hundred and twenty-nine (429), in the City of Washington, D. C., described in the proceedings in this cause, for the sum of $37,500.00.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Dora Steele vs. **Marshall Steele.** } No. 11141. Docket.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, **Marshall Steele**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of willful and uninterrupted desertion for over five years.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.,
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Joanna Hetherman vs. **John Hetherman.** } No. 11241. Eq. Docket.

On motion of the plaintiff, by Mr. H. L. Prince, her solicitor, it is ordered that the defendant, **John Hetherman**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bonds of matrimony on the ground of willful desertion and abandonment of the plaintiff by the defendant.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk. &c.
36 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

The German-American Bank of Rochester, New York. vs. **The Schlicht and Field Company.** } No. 28701. Docket.

On motion of the plaintiff, by Mr. Mussey, its attorney, it is ordered that the defendant, **The Schlicht and Field Company**, cause its appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover the sum of $36,320.65 with sundry interest thereon, alleged to be due the plaintiff by the defendant, for money paid by the plaintiff to the defendant upon sundry notes and bills of exchange negotiated by the defendant with the plaintiff.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN JUSTICE COURT OF THE DISTRICT OF COLUMBIA.
BEFORE CHARLES WALTER, ESQ.

The 5th day of September, 1888.

William H. Clagett vs. **Pembroke Marshall.** } No. 14041. Docket.

On motion of the plaintiff, by Mr. Duhamel, his attorney, it is ordered that the defendant, **Pembroke Marshall**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce plaintiff's lien as landlord as against goods and chattels of defendant on the premises, 819 Market Space, in the City of Washington, D. C.

36 By the Court. CHARLES WALTER, Justice, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Genevieve B. Wimsatt et al. vs. **Richard Wimsatt et al.** } Eq. 11131.

The Trustee in this cause having made sale of lot 25, in square 390, to James M. Lanigan, at and for the sum of twenty-three hundred dollars, as directed by the Court. It is, this 20th day of August, 1888, ordered that the said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of September, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before the said 21st day of September, 1888.

By the Court. WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.
34 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of **Alexander A. Greer**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1888.

LUCINDA H. GREER, Adm'x, 1113 10th st. n. w.

35 No. 3189. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Albert B. Baker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of August, 1888.

SIMON D. NEWCOMB, Ex'r, 926 N. C. ave.. City.

35 No. 3166. Ad. D. 14. F. W. Jones, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Charles Homiller**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 23d day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 23d day of August, 1888.

JAMES H. TAYLOR, Ex'r, 613 15th st.

35 No. 3169. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 24th, 1888.

In the case of **Samuel E. Arnold**, Administrator of **Charles Clark**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

35 No. 2821. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 27th, 1888.

In the case of **Emily M. Farless**, Executrix of **Anna J. G. Mirick**, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William J. Peyton**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 18th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 18th day of August, 1888.

PAULINE L. PEYTON,
JOSEPH I. PEYTON,
Executors.

35 No. 3195. Ad. D. 14. C. C. Lancaster, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Cuthbert Walker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of June next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of June, 1888.

ISABELLA WALKER, Ex'x, 2523 K st.

35 No. 3129. Ad. D. 14. Matthews & Matthews, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 20th, 1888

In the case of Thomas I. Gardner, Executor of **Griffin Saunders**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 14th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

34 No. 2775. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of **John Niland**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 20th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 20th day of August, 1888.

HANNAH NILAND,
LAURENCE CONNOR,
PETER McCARTNEY,
Executors.

35 No. 3196. Ad. D. 14. Neal T. Murray, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Thos. C. Homiller et al. vs. **Chas. Homiller et al.** } No. 10687. Equity Docket 27.

The Trustees appointed to make sale in this cause having filed their report of sales on the 10th day of August, 1888, it is, on motion of complainants' solicitors, this 13th day of August, 1888, ordered that the said sales be, and the same hereby are ratified and confirmed, unless cause to the contrary thereof be shown on or before the 15th day of September, 1888.

Provided a copy of the foregoing order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before the said 15th day of September, 1888.

WM. M. MERRICK, A. J.

A true copy. Test: R. J. MEIGS, Clerk.

34 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 13th, 1888.

In the matter of the Estate of **Lindsay Muse**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by William H. A. Wormley and John F. Cook.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3152. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

August 13th, 1888.

In the matter of the Estate of **Elizabeth MacLeod**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Norman S. Bestor and Orson H. Bestor.

All persons interested are hereby notified to appear in this Court on Friday, the 7th day of September next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
33 No. 3187. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 8th, 1888.

In the case of **Frederick W. Pratt**, Executor of **Lewis Brown**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2742. Ad. D. 13. A. A. Brooke, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 10th, 1888.

In the case of **Lewis C. Reinburg**, Administrator c. t. a. of **Sarah A. L. Barnes** (nee Martin), deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 7th day of September, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
33 No. 2756. Ad. D. 13. N. Dumont, Proctor.

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American Law Times Reports, new series, vol. II, 1875.
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Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

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Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
Louisiana, 1 to 10 Martin.
Lovelass on Wills.

Maddock's Chancery, vols. 1, 2.
McHenry on Ejectment.
Montagu on Set-off.

New York Rev. Stats., vols. 1, 2, 3., 5th ed

Orphan's Court Manual.
Oldham & White's Digest, 1 vol.

Paschal's Annotated Digest, 2 vols. duplicate.
Peere's Chancery Reports, vosl. 1, 2, 3.
Penal Code 1857, Duplicates.
Penal Code of 1857 and Amendments.
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Seaton's Decisions in Equity.
Smith on Executory Interests, 1845.
Smith's Probate Law, 1868.
Smith's Elements of the Law.
Special and General Laws, 1870, 1873.
Swinborne's Treatise on Wills, vols. 1, 2, 3.

The Reporter, Houghton, Osgood & Co., vols. 5, 6, 7, 8, bound; vols. 9 to 20, inclusive, unbound.
The Transcript, 1873, 3 vols., published in New York.
Treatise on Equity, Fonblanques.
Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
U. S. Digest, Abbott, vol. 1, A to C, 2 copies; vol. 2, D to L., 2 copies; vol. 3, M to Y, 2 copies; vol. 5, Sup., F to M, 1 copy. These annuals, viz.: vol. 1 to 8, (duplicates); 9 to 17, single, with 1 vol., Table of Cases and Equity Digest, vol. 2.

Warren's Duties of Attorneys, 1870.
Watkins on Descents.
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ESTABLISHED 1874.
EDWARD S. McCALMONT, *Editor.*

VOL. XVI. - - - - - - - No. 38

WASHINGTON, D. C. - - - SEPTEMBER 19, 1888

Address by Hon. George Hoadley.

[Continued from No. 37.]

Sir Francis Palgrave, in the second part of his Rise and Progress of the English Commonwealth, has translated for us from the original latin, still preserved in the Chapter House at Westminster, the history of a lawsuit brought in the reign of Henry II by Richard de Anesty against Mabel de Francheville for the recovery of the lands of his uncle, William de Sackville, from whom the plaintiff claimed to have inherited. Even then, in the early days of the common law, the office of applying the standard of justice was any thing but simple. It consisted chiefly in importunity and bribery. Eight animals, viz: six palfreys and two packhorses were lost or ruined in the forty-four journeys, which this plaintiff was compelled to make either in person or by the proxy of his brother, or of "Sampson," his chaplain, to London and Windsor and Oxford and Woodstock and Wales and Gascony, and divers other parts of Great Britain and France, in pursuit of justice. Stays were as common then as they now are in the courts of New York. De Anesty, who was his own historiographer, says:

"And in the meantime I sent John, my brother, beyond the seas to the King's Court because it was told to me that my adversaries had purchased the King's writ exempting them from pleading until the King should return to England; and therefore I sent my brother for another writ, lest my pleadings should be stayed on account of the writ obtained by my adversaries."

A class of practitioners, not now, at least publicly, known to exist, were often called to the aid of de Anesty. Thus he says:

"And I kept my day at London with my clerks and my witnesses, and my friends and my helpers, and there I remained for four days, pleading every day."

And testimony seems to have been provided occasionally by proxy, for this diligent pursuer of justice writes that he "sent John, my brother, for Godfrey de Marci, in order that he might attend as my witness, and he could not come because he was ill, but sent his son in his place."

Whether the office of witness was or not hereditary in the de Marci family we are not told, but the boy must have filled his father's place with ability, and to the satisfaction of the plaintiff, for at least after expending twenty-one and one-half silver marks, and sixty-six pounds twelve shillings sterling (an immense sum in the money of those days) in travel and in travail, in paying for spoiled and killed horses, and bribing officers of justice, money borrowed from "Vives, the Jew of Cambridge," and six of his co-religionists, and Mirabella, the Jewess of Newport, and Comitessa, the Jewess of Cambridge," upon usury so great that thirty-seven shillings and four pence were paid for fourteen months' use of forty-shillings—after all this labor and cost, de Anesty had judgment for the recovery of the lands of his ancestor. He records his victory in these modest words:

"And we came before the King at Woodstock, and there we remained for eight days, and at last, thanks to our lord, the King, and by the judgment of his court, my uncle's land was adjudged to me; and there I spent seven pounds and ten shillings."

What we may fairly conclude to have been the *causa causans*, the *ratio sine qua non*, of this victory, (of course I mean besides the "simple office of applying the standard of justice to the particular case" of de Anesty *vs.* de Francheville) is recorded as follows:

"These are the gifts which I gave to the pleaders and the clerks which who helped me: To master Peter de Melide, ten marks and a gold ring worth half a mark of silver; and to Master Robert de Chimai one mark; and in the King's Court I spent in gifts in gold and silver and in horses sixteen marks and a half; and I gave forty shillings to Master Peter de Littlebury; and amongst the other pleaders, my neighbors, who were accustomed to come to my plea, I spent in gifts of money and horses twelve marks and a half; to Ralph, the King's physician, I gave thirty-six marks and a half, to the King an hundred marks, and to the Queen one mark of gold."

De Anesty records that one of the days in court which he enjoyed was at Windsor, where the King "and my Lord Richard de Lucy were; and at that day I came with my friends and my helpers, as many as I could have. And in the meanwhile I sent my brother for Ranulphus de Glanville."

So it seems that the most eminent lawyer in England, as I suppose Glanville then was (he afterward became justiciary of the kingdom), was called into this case. Whether Glanville responded to the appeal does not appear, although it is stated that John de Anesty "lost a palfrey, which he had bought for twenty shillings, and he spent half a mark in this journey."

But Lord Richard de Lucy came to the front again, for as de Anesty says:

"Because I could not get on at all with my plea, I sent to my Lord Richard in Wales to the end that he might order that my plea should not be delayed. And then by his writ he ordered Ogerus Dapifer and Ralph Brito that without delay they should do justice to me."

The Brito family seem to have been in the business of doing justice, both civil and criminal, in the reign of Henry II. For it is recorded in the history of Saint Thomas A. Becket, that when the monarch in his wrath cried, "How, a fellow that hath eaten my bread—a beggar that first came to my court on a lame horse—dares insult his King and the royal family, and tread upon the whole kingdom, and not one of the cowards I nourish at my table, not one will deliver me from this turbulent priest!" Richard Brito was one of the knights who straightway betook himself to "the simple office of apply-

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ing," not the standard, it is true, but the "sword of justice" to the Archbishop of Canterbury.

The case of de Anesty *vs.* de Francheville was decided before A. D. 1168, the year in which Glanville became justiciary. Six hundred and fifty years later the case of Ashford *vs.* Thornton came on for hearing on plaintiff's demurrer to defendant's reply to plaintiff's counter-plea before the Court of King's Bench, Lord Ellenborough presiding, with whom sat Justices Bayley, Abbott (afterward Lord Tenterden), and Holroyd. It was an appeal of murder brought by William Ashford, heir at law of Mary Ashford, against William Thornton, after Thornton had been tried upon indictment and acquitted of the crime by the verdict of a petty jury. The reporters (1 Barnewall & Alderson, 405) state that Thornton, being attached in this appeal, pleaded thus:

"Not guilty, and I defend the same by my body," and thereupon taking his glove off, he threw it upon the floor of the Court.

To this plea Ashford counter-pleaded at length, setting forth facts leading to strong suspicions and amounting, if true, to cogent proofs of guilt, concluding as follows:

"Wherefore he prays judgment and that the said Abraham Thornton may not be permitted to wage battle in this appeal against him, the said William Ashford."

To this counter-plea Thornton replied, averring facts which, as he claimed, afforded "more violent presumptions, and are stronger proofs that he, the said Abraham Thornton, is not guilty of the felony that the said presumptions and proofs in the said counter-plea set forth that he, the said Abraham Thornton, is guilty of the felony and murder whereof he is so appealed as aforesaid. And this he, the said Abraham Thornton, is ready to verify. Wherefore he prays judgment, that he may be admitted to wage battle in this appeal with him, the said William Ashford."

The demurrer to this reply was argued by Chitty for the plaintiff, and Tindal (afterward chief justice of the Common Pleas) for the defendant. The discussion did not relate to the question, if it could be called such, whether these barbarous usages, appeals of murder after acquittal, and wager of battle in defense of a life sought to be twice placed in jeopardy, should be treated as obsolete. By no means; the question rather was whether the suspicious circumstances pleaded dispensed with battle, or the matter of avoidance shown entitled the defendant to the chance of escape from the gallows by the murder of the appellant. And the average antiquity of the authorities cited must have been at least four hundred years, beginning as they did with Glanville, Bracton, Britton, Fletas, and only, with regret, as I read the minds of counsel, coming down to so recent a treatise as Coke's second Institute and more modern instances or authors.

In giving judgment, Lord Chief Justice Ellenborough said (p. 460):

"The general law of the land is in favor of the wager of battle, and it is our duty to pronounce the law as it is and not as we may wish it to be."

Bayley, J., said: "This mode of proceeding by appeal is unusual in our law, being brought, not for the benefit of the public, but for that of the party, and being a private suit wholly under his control. It ought, therefore, to be watched very narrowly by the Court, for it may take place after trial and acquittal on an indictment at the suit of the King; and the execution under it is entirely at the option of the party suing, whose sole object it may be is to obtain a pecuniary satisfaction. One inconvenience (*sic in orig.*) attending this mode of proceeding is that the party who institutes it must be willing, if required, to stake his life in support of his accusation."

The Court having expressed its unanimous opinion against the demurrer and in favor of the battle, the parties consented to stay judgment on the appeal, and that the appellee be discharged. Thereupon Thornton was handed over to the crown side of the Court, arraigned on the appeal at the suit of the King, pleaded "*autrefois acquit*" and was discharged upon admission of the attorney general that the plea was true.

Between the dates of de Anesty *vs.* de Francheville and Ashford *vs.* Thornton more than twenty generations of Englishmen lived under the rule of the common law. The unwritten common law pursued its uneven course for nearly seven hundred years, applying "the simple standard of justice" in the execution of the writ "*de heretico comburendo*," hanging witches, absolving the bigamist Duchess of Kingston and other criminals by benefit of clergy, delivering some debtors by wager of law, and imprisoning others in filthy prisons, refusing the right of counsel and of cross-examination, and testimony by the accused in criminal prosecutions, in civil cases solving quiddles like that of which Shakespeake makes such delicious fun in Hamlet, and which Lord Chief Justice Dyer and his associates seriously debated in the case of Hales *vs.* Pettit, Plowden, 253, viz: Whether Sir James Hales killed himself while still living or after death, unrelieved in its steady progress toward its present condition described by Mr. Pollock as "Chaos tempered by Fisher's Digest" which we may on this side the Atlantic rightly name "Darkness obscured by the selections called American Reports"—unrelieved except by the intervention of injunctions in equity, by acts of Parliament and the genius of a single constructive mind, William Murray, Lord Mansfield. The unwritten law has no power, absolutely none, without extrinsic aid to cleanse itself, to deposit sediment or throw off lees. It embalms errors as truths, and enshrines its blunders as gods. As to the case of Ashford *vs.* Thornton, we read with pleasure that in 1819, at the first session of Parliament, appeals of murder and wager of battle were both abolished, and both these methods of applying the simple standard of justice to the circumstances of cases ceased to exist by act of the Legislature, not of the Courts.

The progress of mankind is marked by the conversion of the unwritten into written law by the crystallization of the uncertainty into the definite. Magna Charta, the petition of right, the *habeas corpus*, the abolition of imprisonment for debt, the Declaration of Independence, the amendments to the Federal Constitution, these are illustrations of the great work done for liberty and civilization by this process. Not

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in tradition and memory only are found the guaranties of peace and light which the labors of ages have won from the barbaric usages of our legal ancestry. They are enshrined in ordinance; each mile-stone of progress and hope on the long path from justiciary, Ranulphus de Glanville to Chief Justice Melville W. Fuller, is a written law.

Lord Mansfield's decision in the Somerset case, the judgment of the Supreme Judicial Court of Massachusetts that the Bill of Rights contained in the Constitution of that Commonwealth, adopted in the year 1780, gave freedom to every slave, are but exceptions to a general rule and exceptions which alas! are brought into contrast with the holding of the judges in the case of ship-money, the imprisonment of Hampden, and the recorded opinions of the majority of the judges of the Supreme Court of the United States in the case of Dred Scott.

Schiller, with the sublime insight of a seer, prophet as well as bard, states the value of written law finely, in the remonstrance addressed by the aged warrior, Octavio Piccolomini, to his son Max.

With the ardor of youth, Max protested:

"But in the field,
Aye, there *the present being* makes itself felt.
The personal must command, the actual eye
Examine. If to be the chieftain asks
All that is great in nature, let it be
Likewise his privilege to move and act
In all the correspondences of greatness.
The oracle within him, that which *lives*,
He must invoke and question—not dead books,
Not ordinances, not mould-rotted papers."

Octavio Piccolomini responds:

"My son, of those old narrow ordinances
Let us not hold too lightly. They are weights
Of priceless value, which oppressed mankind
Tied to the volatile will of their oppressors.
For always formidable was the league
And partnership of free power with free will.
The way of ancient ordinance, though it winds,
Is yet no devious way. Straight forward goes
The lightning's path, and straight the fearful path
Of the cannon ball. Direct it flies and rapid,
Shattering that it may reach, and shattering what it reaches.
My son! the road the human being travels,
That on which blessing comes and goes, doth follow
The river's course, the valley's playful windings,
Curves 'round the cornfield and the hill of vines,
Honoring the holy bounds of property,
And thus secure, though late, leads to its end."

Sir William Blackstone tells us that municipal law is "a rule of civil conduct, prescribed by the supreme power in the State, commanding what is right and prohibiting what is wrong."

This truly describes the ideal system, law as it ought to be, rules ascertained, fixed and certain, with no other ambiguity than necessarily attends the use of language, or results from the want of provision of its authors; it describes law codified and written, open to change when necessity demands; law found in a book, not in a fog, or well, whether of the judicial mind or other; rules of civil conduct required by the customs of the present, not the past, constructed by sages in advance of and to prevent controversies, "commanding what is right and forbidding what is wrong."

How far does this famous sentence describe "the unwritten law bound by no rigid form of words," whose blessings we enjoy to-day? Much as a planet resembles a nebula, as the definite bears the image of the indefinite, as the known reflects the lineaments of the unknown, as the crystal discloses the parentage of the flux.

Can anything be more unjust than to hold a well-meaning, law-abiding and honest citizen to consequences resulting from ascribing a meaning and purpose to action which he could not have foreseen? It is the very essence of equity in the social state that men should know what they are commanded to do and to desist. Blackstone also says:

"It is requisite that this resolution be notified to the people who are to obey it. But the manner in which this notification is to be made is matter of very great indifference. It may be notified by universal tradition and long practice, which supposes a previous publication, and is the case of the common law of England. It may be notified *vive voce* by officers appointed for that purpose, as is done with regard to proclamations, and such acts of Parliament as are appointed to be publicly read in churches and other assemblies. It may lastly be notified by writing, printing or the like, which is the general course taken with all our acts of Parliament. Yet, whatever way is made use of, it is incumbent on the promulgators to do it in the most public and perspicuous manner; not like Caligula, who (according to Dio Cassius) wrote his laws in a very small character and hung them upon high pillars, the more effectually to ensnare the people."

To punish action that was forbidden in obscure language or by doubtful implications, to punish the simple for that which only the wise could have known was to be avoided—this, this is of the very essence of tyranny. Above all other requisites of just laws, they must be capable of being understood and known in advance. This indeed is involved in Blackstone's word "prescribed." He who unconsciously offends may be guilty of want of due endeavor to know; but if with all diligence he could not have learned his social duty, society in punishing him is more guilty than he, and better deserves to bear the burden. To such no mandate has been prescribed.

Let us admit the difficulties which inhere in the nature of the subject. Language, the medium of communication from society to the citizen, is not a perfect instrument, and legislators are often far from being scholars capable of using it as an arm of precision. Nor is the gift of prophesy vouchsafed to the law maker. Novel and surprising situations may confront the citizen and the judge which the "sovereign power in the State" has failed to anticipate.

These and other difficulties are, however, not impossibilities. To suggest them is only to say: "This is a world, not a paradise." And even if they relieve society from the duty of providing codes of universal application, of scope sufficient to meet every change and phase of a complex civilization, of purpose so clear as insure against mistake, if this ideal be confessed impossible, nevertheless it is still of the highest importance, it is society's most urgent duty to reduce the chance of uncertainty to a *minimum*. This is not done, rather is shunned by leaving the law undefined, hiding its rules and calling them the "unwritten law."

It is a mockery of justice to say to the unoffending citizen: "The law applicable to your case

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had not been expounded, but it existed. It was unfortunate for you that your action preceded its exposition by the Courts; more unfortunate still for you if it were your action which provoked such exposition, and if at your expense the true rule were first judicially pumped from the well where the truth of the unwritten law is supposed to dwell and so 'prescribed' to others."

In More's Utopia, that legacy of wise and lofty thoughts left by the great martyr chancellor, the citizens of the ideal Commonwealth are described as having "but few laws, and such is their constitution that they need not many. They very much condemn other nations whose laws, together with the commentaries on them, swell up to so many volumes; for they think it an unreasonable thing to oblige men to obey a body of laws that are both of such a bulk, and so dark as not to be read and understood by every one of the subjects. * * * Every one of them is skilled in the law, for as it is a very short study, so the plainest meaning of which words are capable is always the sense of their laws. And they argue thus: All laws are promulgated for this end, that every man may know his duty; and, therefore, the plainest and most obvious sense of the words is that which ought to be put upon them; since a more refined exposition cannot be easily comprehended, and would only serve to make the laws become useless to the greater part of mankind, and especially to those who need most the direction of them; for it is all one, not to make a law at all, or to couch it in such terms that without a quick apprehension and much study a man cannot find out the meaning of it."

Surely it is now as easy to combine the wisdom of the wisest, the learning of the most studious, the experience of the busiest, and to confide to a body of lawyers thus constituted the task of composing, proposing, endeavoring to prescribe in set and certain terms all the laws, the need of which this generation can now anticipate, as to leave them to dribble out drop by drop from the Courts of thirty-eight States, the Territories and the Federal judiciary through a long course of years. When we consider how much one man has done to this end—that two States have accepted his work and professed satisfaction in its results—why should we abandon the work as if hopeless.

But codification is not our whole present necessity. If successful, the code will reduce to written and definite shape, incapable of misunderstanding, except so far as the ambiguity of language may involve, the body of laws relating to the private rights and duties of the citizen. It takes no note of public rights and duties. These are supposed to be codified already. But "eternal vigilance is the price of liberty," and no advocate of the code, however sanguine, has ever claimed that it could be made perfect or free from that necessity which attaches to all things mundane, viz., the need of repairs.

Our fathers sought to protect our liberties and define our civil rights by the adoption of written constitutions. But of what value is the protection afforded by these high and solemn ordinances of fundamental right, if by the exaggeration of the general grant of legislative power, its amplification under the new theory of "inherent sovereignty," and the expansive power of police regulation applied in Munn *vs.* Illinois, Mugler *vs.* Kansas and Powell *vs.* Pennsylvania, to the State, and the Legal Tender cases to the Federal Government, coupled with the reduction to a *minimum* of each limitation or article of inhibitive protection, our State Legislatures and the Federal Congress become endowed with the omnipotence of the English Parliament? How this will work two modern instances prove. Not ten years have passed since a British government, called Liberal, imprisoned, as so called "suspects," seven hundred of the best men in Ireland, among them the Parliamentary leaders of the people, without accusation, without trial, without *habeas corpus*, without other means of deliverance for the innocent except supplication to the executive, without duration of durance other than the limit of the existence of the law. And at this very moment John Dillon, than whom, by the admission of his political antagonists themselves, no more pure and lofty spirit has enriched the annals of his native land since the death of Robert Emmet, languishes in the hospital of Dundalk jail, condemned to prison for a term not to expire until December next, for words which, when spoken, violated no law, and became illegal only by subsequent executive and legislative action. And this is the land whose abhorrent and barbarous customs furnish the basis of our unwritten law. From such outrages the written Constitutions of every State and of the United States ought to secure us effectually, and will, unless filtered away by exposition, the peculiar danger to which all written law is exposed.

That the work of committing the body of the law to written form may be trusted to the present generation seems to me plain. I claim for the bar of this day equality with that of any prior time. It is true that the age of forensic eloquence has measurably passed, both in the United States and England. This is a generation devoted to business of persuasion by plain statement, unassisted by rhetorical decoration. Leaving the United States out of consideration as involving comparisons of the powers of friends, living and dead, who can set side by side the eloquence of Erskine in his greatest achievements, with the argument of Sir Alexander James Cockburn in the Palmer Case, or the opening of Sir Henry James in the Lefroy Case, without feeling that the advantage is vastly in favor of the latter? And the work of making statutes, of prescribing regulations, of fixing rules for conduct, does not call for forensic eloquence, but for precisely the talents which the bar of to-day possess—clear conceptions and logical order, therefore, persuasive conclusions.

If we admit that the great work of codification has not yet been properly done, let us, instead of finding fault with Mr. Field and his colleagues, seek to improve upon their labors and to present better *formulæ*. Certainly when in the future decisions shall be made affecting private rights, they will be in some form or other, and the duty of this generation is to anticipate such form and present it in advance. This is all. If we must confess that the bar of to-day is not equal to that of Justinian's age, not equal to Tribonian and his associates, that Mr. Field's work is premature or inadequate, and that to another generation must be committed the task of securing us against the dangers of "inherent sovereignty" in public law, and the unwritten in private law, let us

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devote ourselves to the work of improving the education of our legal successors. Upon this we can all agree.

There is no excuse for admitting to the practice of the law any man not adequately prepared for the work. Let law schools abound and private preceptors be treated as adjuncts. Require competent knowledge not only of our own tongue, but also of the language which forms its basis; require a competent knowledge of the laws and systems of the great empire in which that language was in daily use; require a competent knowledge of the history of that empire, the development of its civilization, as well as of the nations speaking the English tongue, whose children we are. Widen the horizon of legal vision. Give to the lawyer before he becomes so pushed with the affairs of clients as to be debarred by the exigencies of life from study of all except the cases which happen to come to him; give to the legal student the amplest and fullest opportunities to survey, not merely the historical data which precede our age and are the basis of our system, but others which constitute the foundations of other civilizations worthy of being considered with our own. Wage implacable war against ignorance; forgive no man who attempts to come to the bar without an adequate equipment, derived not merely from study of the statute and the laws of his own country, but from a general survey at least of those of other lands. Lift up the standard; increase the term of study, and be steadfast in exacting from the student the bestowal of time and labor in study. Four things are required of all generations of American lawyers: Integrity, industry, learning, faculty. The first and second of these are at the command of all; industry will bring learning, but God only can give power, faculty, genius. This seems to be allotted to every people and generation according at least to their deserts. We may therefore await the future in serene confidence that if by honest labor we do our part, He who giveth the increase will not withhold from us and our successors that vital spark which shall animate our and their corporate work and make it productive of blessings to generations.

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1. EVIDENCE that upon the refusal to make a printing office a "union office," a typographical union sent circulars to its customers informing them that they had "boycotted" it, and notifying such customers that they in turn would be "boycotted" unless they withdrew their patronage from it; that the employees of the printing office and all its customers were denounced in the organ of the union under the head of "black list;" and that the union used every means short of actual physical violence to compel the customers to cease patronizing the office, warrants a conviction for conspiracy. Crump *vs.* Com. Sup. Ct. App. Va., May 26, 1888.

2, Instruction that if defendants agreed to compel the office to discharge from its employment certain persons and take into its employment certain other persons, and that if in pursuance thereof they threatened to injure the business of any of its customers, they must find them guilty, is proper. *Id.*

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

WILLIAM J. MILLER, *Trustee.*
vs.
LIZZIE D. FLEMING *et al.*

EQUITY. No. 10421.

The CHIEF JUSTICE and JUSTICES COX and JAMES sitting.

1. Where a man's title can be referred either to the act of law or to the act of man the former shall prevail.
2. Where, however, the estate is of a different nature from that which he would inherit, he will take by purchase and and not by descent.
3. There is no substantial difference, in the District of Columbia, between an estate in common and the estate which passes by descent. Therefore, when a limitation in a deed is to the right heirs of the grantor, "to take as tenants in common," the title passes by descent and not by purchase.
4. By deed of marriage settlement the settlor conveyed certain real estate to trustees to the use of himself until his intended marriage, then to the use of his intended wife for life, with contingent remainder over to the children of this and a former marriage—failing which he limited the property in fee to his right heirs "to take as tenants in common and not as joint tenants." After the marriage the settlor executed a will disposing of certain other property and devising the residue of his estate to his grandson. *Held*, there being a failure of the contingent remainder, that the residuary devisee took to the exclusion of the right heirs under the settlement.

Decided May 14, 1888.

BILL of interpleader filed by a trustee, to obtain a construction of a marriage settlement.

ON APPEAL by defendant, Mills Dean, from a decree of the Special Term.

THE FACTS and question presented are sufficiently stated in the opinion.

MR. FRANKLIN H. MACKEY for Mills Dean.

MR. JUSTICE COX delivered the opinion of the Court:

In this case it appears that Edward Owen, of this District, on the 21st day of December, 1861, being about to contract a second marriage, executed a deed of settlement premising that in consideration of his intended marriage and "for making for and towards the jointure of the said party of the second part" (his intended wife) in case after the solemnization of the marriage, she survived him "and also for making some provisions for the sustenance and support of the children and issue of the intended marriage" he conveyed the property in question to Mr. Miller, upon trust: first, to hold to the use of the settlor until the marriage, and then for the use of his intended wife for life, free from all debts and control of the settlor, and the rents to apply to her sole use and benefit, and for the sustenance and support of any children of the marriage; and third, if she should die before the settlor without leaving any children, then to the use of the settlor, his heirs and assigns; fourth, should she survive the settlor, and then die leaving children of the marriage, then the property was to go to the use of such children and the children of the settlor's former wife; and lastly, should she sur-

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vive the settlor and then die without leaving children of the marriage, then "to the use of his right heirs and their heirs and assigns, as tenants in common and not as joint tenants."

In other words, to state it more briefly, the conveyance is made in trust, first, for his intended wife for her life, and in case of her death after him without leaving children (which was the case) then to the use of his right heirs as tenants in common and not as joint tenants.

Now, doubtless under the advice of counsel, Mr. Owen assumed that this remainder was a nullity and that the conveyance left the reversion in him, and his heirs would take by descent, instead of as purchasers under this settlement. Therefore, he made a will disposing of certain other property and devising the rest and residue of his estate to the defendant, Mills Dean, which would include this property. After his death, six heirs claimed that they were entitled to the property by way of remainder. On the other hand, Mr. Dean contended that he was entitled to it, and Mr. Miller, the trustee, not being willing to solve the question himself, asks the instruction of the Court as to what he shall do in the premises.

The question has been discussed by Mr. Mackey with great learning and a copious citation of black-letter authorities which would be very interesting for the Court to review in detail. But we have not the time, and do not deem it necessary to go into them at length, and I shall only state some general conclusions which we think dispose of the question. It is very well settled, and it is an ancient rule, that if a man's title can be referred to either the act of the law or to the act of man, the former shall prevail. It is a recognized qualification of the rule, however, that if a devise gives to the heirs an estate of a different nature from that which they would inherit, then their title will be referred to the devise and they will not take by descent. It is claimed that the same qualification applies to a deed, limiting an estate to them in remainder.

The principal question in this case is, whether the peculiar language of this remainder would give to Owen's heirs a different estate from that which they would take by descent. It is argued, for the heirs, that it has that effect by reason of the use of the words "to hold as tenants in common," the contention being that if they take by descent they take as coparceners. That leaves us to consider what is the law of descent in the District of Columbia.

An estate which descends equally to all children, without regard to sex, was not known to the common law at all, but is purely a creature of statute. The Maryland Act of 1786, which is our Statute of Descents, commences by reciting that the law of descents which originated in the feudal system and military tenure is contrary to justice and ought to be abolished; and then it goes on and enacts that on the death of a man intestate his estate shall descend *equally* to his children. It does not use the word *parceners* or *coparceners*, from the beginning to end. We are in the habit of speaking of those taking by this statutory descent as coparceners because the only estate which at common law descended to more than one person was an estate in coparcenary. But it is perfectly competent for a statute to create an estate which will descend to several persons who will yet not be coparceners. It may be substantially, to all intents and purposes, an estate in common.

Is there any difference between an estate in common and an estate which passes by our law of descent? Let us see now whether there would be any difference, whether these heirs are to be considered as coparceners or as tenants in common. Each heir in this case would take precisely the same undivided interest in the estate, and would be able to transfer it and transmit it to heirs in exactly the same manner and would have exactly the same right of partition, and not only that, but their estates would have the same identical unities of time, title, interest and possession. It is impossible to point out any difference, whether they take it as tenants in common or as coparceners.

This question, as to the effect of this statute, is suggested as far back as the year 1804, in the Court of Appeals of the State of Maryland in the case of Mitchell *vs.* Gover, 1 Harr. & J., 507, where an action of ejectment was brought by several heirs, and the question was whether they had a right to join, or, as tenants in common, they ought to sue separately. The cause was finally settled, so that no opinion of the Court was given. But Luther Martin who, as we know, was one of the greatest lawyers of this country, used the following language in argument:

"Under the Act of 1786 the descendants take the estate as heirs *sub modo*. They take in the same manner as tenants in common. The Act of 1786 vests a particular estate. *It* is not an estate of joint tenancy, tenancy in common or parcenary. But it is an estate peculiar to itself. It is not in the power of any one of the heirs to compel a partition of the estate. The Act points out how the division is to be made, by application to the county court, or court of chancery, and one of the heirs, may take the whole estate if it will not admit of division, by paying to the others their proportion under valuation. The estate has qualities similar to that of a joint tenancy, tenancy in common and coparcenary.

The question arose at a much later date in the case of Hoffar *vs.* Dement, 5 Gill, 132, in which the Court of Appeals was construing the Act of Maryland of 1820, and not that of 1786.

There was a case before this Court (Power *vs.* Davis, 3 MacArthur, 153) in which the main question was whether a certain paper purporting to be a codicil, leaving pecuniary legacies was ever completed, and the Court held unanimously that it was not. But in addition to that, Judge MacArthur, speaking for himself, held, that the real estate in the hands of the heirs was not chargeable with the legacies, because the heirs took as purchasers and not as heirs.

This might, however, be, not because the devise was intended to pass a tenancy in common, while the descent would give a coparcenary, but because the devise was to *children* and not to *heirs*. A devise to *children* would give an estate by purchase, which would be entitled to as much favor as a bequest of money; and this would be sufficient to sustain the judge's

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conclusions. As far as his opinion extends beyond this he does not commit the Court and he is not sustained by the cases referred to.

Judge Wylie concurred in the opinion and that is all we find; but there is no such clear committal of the Court to this view as would hamper us in our determination of this as an original question; and we are of the opinion that there is a substantial identity between the estate limited by this deed to the heirs and that which they would take by descent, and therefore such a limitation left it disposable by the testator by deed or will; and the will gives the property to Mr. Dean, who is claiming it.

It is further contended, on behalf of the devisee, that by no kind of conveyance could the testator give a fee simple estate by a deed to his heirs. It is admitted that by will he might, but that he cannot by deed, even by way of remainder, give an estate in fee simple different from that which they would take by descent. But it is not necessary to examine that question in the view we take of the case.

We are of opinion on the whole that Mr. Dean is entitled to the property.

MARYLAND COURT OF APPEALS.

KENNEDY *vs.* COUNTY COMMISSIONERS.

Decided June 12, 1888.

1. In an action against county commissioners to recover damages for injuries alleged to have been sustained by reason of a defect in a highway, defendant's prayer that if the fright of the plaintiff's mules caused the injury, the plaintiff's recovery is absolutely defeated unless the fright was caused by failure of duty on the part of the defendants, is erroneous, as the fright of the mules does not imply negligence in the plaintiff unless caused by his carelessness.
2. In such action a prayer that if the injury was caused by a want of ordinary care by the plaintiff he could not recover, although the highway was out of repair at the time, is erroneous, since it makes no distinction between the remote and proximate cause.
3. A prayer enumerating certain portions of the evidence to be considered by the jury to the exclusion of other portions is objectionable.

APPEAL from the Circuit Court for Cecil County.

BRYAN, J.—Kennedy brought suit against the county commissioners of Cecil County to recover damages for personal injuries sustained while traveling on the public road of the county. It was averred that the defendants negligently permitted the road to be out of repair, and that, by reason of this negligence, the plaintiff was injured. The testimony tended to show that a bridge over a small stream was out of repair, and that in crossing it the plaintiff was injured. The evidence was contradictory on the question of negligence; some of it tending to show that the plaintiff was injured by his own negligence, and some of it to the effect that the injury was caused by the unsafe condition of the bridge. Four prayers were offered by the plaintiff, and seven on behalf of the defendants. The Court granted all the prayers on both sides, and the plaintiff excepted to the granting of the defendants' prayers.

In this court the appellant's objections were chiefly confined to the third and fourth prayers of the defendants. By the third prayer, the jury were instructed that, if the accident was caused by fright of the plaintiff's mules, the verdict must be for the defendants, unless the fright was caused by a defect in the road manifestly calculated to frighten horses of ordinary gentleness, and the defendants knew, or by the use of ordinary care and diligence might have known of the same in time, by ordinary diligence, to repair it. The relative duties of plaintiff and defendant in cases of this kind have been frequently considered by this Court. We do not propose to depart from what we have already decided on this subject. The views of the Court are tersely expressed in Kean's Case, 61 Md., 167. It is there stated, in substance, that the plaintiff must show that his injury was occasioned exclusively by the negligence of the defendant and that, if he has himself been guilty of any negligence which has directly contributed to cause the accident, he cannot recover; but that, even if he has been guilty of negligence which may have remotely contributed to the accident, yet if the defendant could, by the exercise of reasonable care and diligence, have avoided it the plaintiff's negligence will not excuse the defendant. The fright of the mules did not necessarily imply any negligence or culpability on the part of the plaintiff. He is not responsible for the consequences produced by it unless they can be traced to some default on his part. The question is not a new one in this Court. According to Crowther's Case, 63 Md., 567, if the mules were managed with a want of ordinary care and skill, and such want of care and skill contributed to produce the accident; or if they were unsafe and unfit to be driven on a public road, and the plaintiff knew it, or might have known it, and the accident would not have occurred if they had been ordinarily gentle and well broken—the verdict ought to have been for defendants. And the same decision was made in Cassel's Case, 66 Md., 434. Bateman's Case, Md. Law Journal, June 6, 1888 (decided at January term), recognizes and maintains the same principle. The ruling of the Court below on this prayer declares that, if the fright of the mules caused the injury, the plaintiff's recovery is absolutely defeated, unless the fright was caused by the failure of duty on the part of the defendant. If this cause be not shown for the fright, no fact or circumstance, or combination of facts and circumstances, can avail to entitle the plaintiff to a verdict. The attention of the jury is directed to this sole inquiry, and, without considering anything else in the case, they are peremptorily required to find a verdict for the defendant. This is not our view of the law.

The fourth prayer was to the effect that if the plaintiff's injury was caused by a want of ordinary care and caution on his part, or on the part of any of his servants, he could not recover, although the bridge was out of repair at the time of the accident. This instruction did not place the case properly before the jury. It disregards the ruling in Kean's Case, already mentioned, because it makes no distinction between the negligence which might be a remote cause and that which might be the direct or immediate cause of the accident. If the jury found negli-

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gence on the part of the plaintiff, and that it remotely contributed to produce the accident, yet he would be entitled to recover, provided they found that the road was in disrepair through defendant's negligence, and that the consequences of the plaintiff's negligence would have been avoided if the road had been in good repair.

The defendant's second prayer was somewhat criticised in the appellant's argument in this Court. It tells the jury that, in passing on the question whether the defendants might, by due diligence have known of the bad conditon of the road, they should consider the nature of the defect itself, if any, the location of the road, whether in a thickly or a sparsely settled country, and whether it was not much travelled. It might also have mentioned the facts, in evidence, that the road commissioners who had charge of the bridge resided about three miles distant, and that the road supervisor who had charge of the road at that point resided two miles distant. But this mode of instructing the jury, by enumerating certain portions of the evidence to the exclusion of other portions, is very objectionabe. The jury are to draw their conclusions from all the evidence in the cause bearing on the subject of inquiry. If a party apprehends that they will make an improper application of any portion of the the testimony, he ought to ask an instruction from the Court, pointing out the questions to which it ought not to be applied. (Pegg *vs.* Warfard, 7 Md., 607.) In a case recently decided, Moore *vs.* McDonald (Maryland Law Journal, March 21, 1888,) this Court expressed its disapproval of prayers drawn in the manner pursued in this second prayer; and on previous occasions it has done the same thing. As the judgment will be reversed for error in the third and fourth prayers we think it unnecessary to say more on this point, hoping that such defective prayers will not be presented by counsel in the future.

Judgment reversed and new trial ordered.

MILLER, J. (dissenting.)—This case was heard originally by four judges only, and a difference of opinion as to how it should be disposed of arose. Thereupon it was deemed best that it should be reargued, and it was accordingly so ordered by a majority of the judges who heard the original argument, without any suggestion or motion by counsel to that effect. The reargument has been made and the case must now be decided by the judges who sat at the hearing. The suit is against the county commissioners of Cecil county to recover damages for an injury sustained by the plaintiff while driving his team over one of the public roads of the county. There was a demurrer to the declaration, which was overruled, and also to the defendant's third plea, which was sustained. The rulings upon these demurrers (if before us for review) seem to be correct. The declaration contains the usual averments in such cases, charging that it was the duty of the county commissioners to keep the roads of the county in repair, and that the road in question was negligently suffered by them to be out of repair, whereby the plaintiff, when traveling thereon, and using due care, was hurt. The local road law for Cecil county (Acts 1884, c. 45), relied on in their third plea, contains nothing which exempts the defendants from their general duty and responsibility in regard to all the public roads of the county. After this action on the demurrers, the case was tried before a jury on issue joined on the plea of *non cul.* The verdict and judgment were in favor of the defendants, and the plaintiff has appealed. The testimony was very conflicting as to the condition of that road at the time of the accident, and as to how the injury inflicted upon the plaintiff was caused. The Court granted all the instructions asked for on both sides, and the single exception is to the granting of those asked by the defendants. The main argument of the appellant's counsel has been addressed to the third instruction, which he insists is erroneous. The others, in connection with those granted for the plaintiff, are addressed to the general questions involved in this and other like cases; such as whether the road was reasonably safe for travel, whether the defendants were culpably negligent in not repairing it, whether there was contributory negligence on the part of the plaintiff and the measure of damages. These instructions seem to me to fairly lay down the law of the case on all these questions, and I can discover no substantial error in any of them.

The third instruction is addressed to that part of the plaintiff's testimony in which he says the accident was caused by the fright of one of his mules, and it becomes necessary to state substantially what he says on this subject. He was engaged in hauling, with a team of four horses and two mules, a hay press, weighing about 6,500 pounds. The accident occurred at a bridge about 16 feet wide, covering a small stream of water which ran across the road. He says the road was about 30 feet wide between the fences, but the traveled part of it was only about 16 feet—the width of the bridge; that when he approached the bridge he could see there was a hole or crack extending about two-thirds of the way across the traveled portion of the road, which had been caused by a flood having raised the upper end of the bridge about six inches higher than the bed of the road, and having washed out the earth next to the bridge as far across the road as this elevation of the bridge extended; that this hole or crack was about two and one-half feet wide, and in order to get on the bridge with his heavy load it was necessary to raise the level of the road to the level of the bridge, so that his team could mount onto the planking of the bridge; that, for this purpose, he and his two drivers carried five or six rails, and placed them along the crack where the elevation of the bridge above the road was least; that this necessarily forced his team away from the centre of the road to the lower or left side of the bridge; that he then took the reins of the tongue horses, another driver those of the middle horses, and another those of the mules, which were in the lead; that in approaching the bridge the wagon was in the extreme east margin of the traveled way, and defendants had allowed bushes, some of which were as high as his shoulders, to grow along the margin of the traveled part of the road, and up to within eight feet of the bridge; that it was necessary the wagon and team should go on this side, instead of in the centre of the road, in order to get on

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the lower side of the bridge, because his team could not have pulled the wagon on the bridge in any other part of the road than that where he attempted to cross; that, advancing on the bridge in this way, he thought he could pass safely over; that the lead mules passed on the bridge near its northeasst corner, and their heads being pulled by the reins to the right, so as to bring the wagon more towards the middle of the bridge after it had got on, the off or right-right mule was frightened by the rails which had been placed in the crack, and shied towards the left or lower side of the bridge, and drew off in that direction, which caused the front wheels of the wagon, beside which he was walking, holding the reins, to swerve round also to the left, and his foot was caught in the wheel, and, being unable to escape, he was thrown down, and the front wheel passed over his foot, causing a compound fracture of the bone of the leg above the ankle joint. Having given this description of the accident and injury, he added "that the wagon being in the position directly along the east margin, and the bushes which were permitted to grow there being flush with the margin, he was unable to escape."

It is difficult, however, to perceive how the bushes could have had anything to do with preventing his escape after his foot had been so caught by the wheel as to inflict this injury. But, at all events, I take it to be very clear that from this testimony the jury could have found that the immediate, and indeed sole, cause of the injury, as thus described, was the fright of the mules. And if this fright was occasioned by a defect in the road for which the defendants were under the law responsible, I take it to be equally clear that the plaintiff would have been entitled to recover. It seems to me, therefore, that it was to meet this aspect of the case, and to lay down the law applicable thereto so far as the defendants were concerned, that this third instruction was asked for and granted. It is as follows: "If the jury find that the accident was caused by the fright of the plaintiff's mules, then their verdict must be for the defendants, unless said fright was caused by a defect in said road manifestly calculated to frighten horses of ordinary gentleness, and that the defendants knew, or by the use of ordinary care and diligence might have known, of the same in time, by ordinary diligence, to have repaired the same."

It was conceded by counsel—and it is undoubted law—that defects in highways by which horses are frightened must be such as are calculated to frighten horses of ordinary gentleness, in order to make the county authorities responsible for accidents caused by such fright. With this concession, and the well-established law on the subject, I can see no well-founded objection to this instruction. It requires, and indeed compels, the jury to find, as they well could from this evidence, that the accident in this case was caused simply by the fright of the mules. It leaves out of view all other causes by which the accident may have occurred, or which may have contributed to produce it. If the jury found that it proceeded from any other cause, remote or proximate, this instruction does not authorize them to find a verdict for the defendants. Such, in my judgment, is the construction and effect of this instruction, and I cannot see that it was in any way calculated to mislead the jury, or that it has the effect of depriving the plaintiff of the benefit of a *prima facie* case supposed to arise from the fact that the road may have been out of repair, or that it is in conflict with any instruction on that subject approved by our decisions in other cases. It was an instruction directed to a particular phase of the present case, and must be taken in connection with the other instructions granted by the Court. My opinion is that by these instructions the whole law of the case was fairly given to the jury, and that the judgment should be affirmed.

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1. IT WAS held in this case that there was an unlawful preference given by carrier in favor of oil shipment in tank car lots against like shipments in barrel car load lots, which was ordered to be corrected, and mode prescribed by which this must be done, giving equal rates on each per pound. Scofield *vs.* Lake Shore, etc., R. Co., 2 Interstate Com. Rep., 67.

2. A carrier must furnish adequate car equipment for all the reasonable needs of the business it advertises, and upon failure to do so, to injury of shipper, it is liable in damages therefor. *Id.*

3. The Interstate Commerce Act has not given the Commission jurisdiction to order the carrier to furnish any particular equipment of cars or in fact any cars at all. *Id.*

4. A carrier is not forbidden by the law from obtaining cars from other carriers, but the rates of freight must be exactly the same. *Id.*

5. Neither is the carrier forbidden from obtaining cars from a shipper for the transportation of freight over its line, but in such case, after deducting reasonable rent published in tariff as part of rate and paid by carrier to shipper for use of cars, the rates must be actually the same as upon freight transported in the same service in the carrier's own cars. *Id.*

6. To render a preference unlawful, it is not necessary that it should be accomplished by any device. *Id.*

7. On account of the phenomenal differences in the expense of service rendered, the exceptionally high rates on oil in barrels less than car load lots as compared with latter, sustained, with a warning, however, to carriers against a general tendency to make excessive differences in favor of car load lots.

Contracts relating to the ordinary concerns of the business of a corporation, made with a person whom it has put in charge, are binding on it. Whittaker *vs.* Kilroy (Mich.), 14 West. Rep., 916.

Where defendant entered into contract with the superintendent of a corporation for the construction of a steam engine, and was subsequently informed by the secretary that the superintendent had no authority to collect money, and thereafter its vice president, who, at the time, had the powers of president, with the superintendent to the defendant went and the notes called for by the contract were made and receipted for—their acceptance was valid. *Id.*

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1. It is reasonable inference that loss of slabs of tin, of over 100 pounds each, after their discharge from ship upon ship-owner's inclosed wharf, would have been prevented if its agents had followed its rules requiring gateman to take receipts from cartmen before permitting goods to leave the wharf. Tarbell *vs.* Royal Exchange Shipping Co. (N. Y.), 13 Cent. Rep., 154.

2. If common carrier by water, notifies consignee of arrival of goods and discharges them from vessel in usual place and affords reasonable opportunity for their removal—constructive delivery is effected which terminates its liability as carrier. *Id.*

3. The general duty of a carrier to deliver, and of a consignee to receive goods transported, is not changed by bill of lading to the effect that they are to be delivered from ship's deck and are to be received by consignee "immediately the vessel is ready to discharge." *Id.*

4. The ship-owner is not liable, as carrier, for a loss occurring after the consignee is notified of arrival of goods and the lapse of a reasonable time for their removal from the wharf. *Id.*

5. But he is liable, as warehouseman, where the loss occurs through the neglect of his agents to take ordinary precautions for the safety of the goods. *Id.*

6. Bill of lading, releasing carrier's liability for loss by pirates and thieves, whether such perils arise from negligence occurring before or during voyage or at port of discharge, only releases it where the perils happened before or during the voyage, and while the goods are in its possession as such, and has no application after contract of carriage has been terminated. *Id.*

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

September 6.

11327. Laura V. Harbaugh et al. *vs.* Isabella M. Harbaugh et al. For partition by sale. Com. sols., Edwards & Barnard.

11328. Henry Johnson et al. *vs.* Stephen B. Elkins et al. For conveyance. Com. sols., Claughton and Mackey.

September 7.

11329. John Sherman *vs.* George Mason et al. For conveyance. Com. sol., R. Hagner.

11330. Harry J. Cook *vs.* Alfred Cloughly. For account. Com. sol., William A. Meloy.

September 8.

11331. Jacob Tome *vs.* John L. Bartlett et al. To substitute trustee. Com. sol., I. G. Kimball.

11332. John R. Wood *vs.* Elizabeth Wood. For divorce. Com. sol., A. B. Williams.

11333. Mary J. James *vs.* William M. James. For divorce. Com. sol., Charles P. Lincoln.

September 10.

11334. Horton C. Ryan et al. Upon petition of Job Barnard, guardian. To approve Orphans' Court order of sale. Com. sols., Edwards & Barnard.

11335. Leah G. Keenan, alleged lunacy. Upon petition of Commissioners of the District of Columbia for committee. Com. sol., A. G. Riddle.

11336. James Hopkins, alleged lunatic. Upon petition of same for committee. Com. sol., Same.

11337. Laura Smith, alleged lunatic. Upon petition of same for committee. Com. sol., Same.

11338. John Daly, alleged lunatic. Upon petition of same for committee. Com. sol., Same.

11339. Charles Morgan, alleged lunatic. Upon petition of same for committee. Com. sol., Same.

September 13.

11340. Anthony Hyde et al. *vs.* William M. Corcoran et al. To construe deed of trust. Com. sol., H. S. Matthews.

11341. Annie McCarthy *vs.* Eugene F. McCarthy et al. To sell. Com. sol., Cook and Cole.

September 14.

11342. Robert Christy et al. *vs.* Virginia H. Moore et al For authority to distribute estate. Com. sol., E. D. F. Brady.

11343. Joseph Guenther *vs.* Peter Fisher et al. To sell defendant's equity of redemption. Com. sol., F. H. Mackey.

11344. Dennis Byrne *vs.* Mary Sullivan et al. For conveyance. Com. sol., C. A. Elliot.

11345. ——— *vs.* ———. Com. sols., Cole & Cole.

September 17.

11346. John H. Sis *vs.* Emily A. Moxley et al. To construe will. Com. sols., Carusi & Miller.

11347. George E. Snelling, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. Inquiry into lunacy. Com. sol., H. E. Davis.

11348. David Callahan, by next friend, *vs.* Catherine Walsh et al. To declare trust. Com. sols., Carusi & Miller.

11349. Augusta Chester *vs.* Ebenezer Morgan. For conveyance. Com. sol., John Raum.

11350. Americus L. Pogue et al. *vs.* John W. Bancroft. For convevance. Com. sols., Birney & Birney.

September 18.

11351. William Better, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. Com. sol., H. E. Davis.

CIRCUIT COURT.—New Suits at Law.

September 6.

28937. Mary E. Howard, administratrix, *vs.* W. S. Sammons. Note, $318.75. Piffs atty, M. D. Brainard.

September 8.

28938. William T. Ogle *vs.* Thomas McMahon. Certiorari. Deft atty, E. H. Thomas.

28939. Oliver A. Parker et al. *vs.* John W. Cox. Notes and account, $212.90. Piffs attys, Birney & Birney.

28940. Stephen Gambrill *vs.* John H. Peake. Note, $100. Piffs atty, R. B. Lines.

September 10.

28941. Wheatley Bros. *vs.* Augustino Montgriffo. Account, $109.97. Piffs attys, Gordon & Gordon.

28942. Simon J. Kemp et al. *vs.* William Whelam. Notes, $133.68. Piffs atty, R. Willson.

28943. Same *vs.* William M. Buckman. Note, $222.01. Piffs atty, R. Wilson.

September 11.

28944. Robert A. Hooe *vs.* Samuel K. Petingale et al. Note, $125. Piffs atty, A. B. Duvall.

28945. The National Bureau of Engraving and Manufacturing Co. *vs.* William S. Sammons. Account, $297.46. Piffs atty, W. W. Boarman.

28946. Henry Liesman *vs.* Edward C. Brice et al. Replevin. Piffs atty, E. H. Thomas.

September 12.

28947. The History Co. *vs.* Posey S. Wilson. Account, $150.50. Piffs atty, W. H. Sholes.

28948. James M. Miller *vs.* The Chaquette Patent Sand and Gravel Co. Notes, $836.96. Piffs atty, Same.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 15th day of September, 1888.

Alice Clementine Hall, Petitioner. vs. James Richard Hall, Respondent. } No. 11244. Eq. Docket 28.

On motion of the petitioner, by Edwards & Barnard, her solicitors, it is ordered that the defendant, James Richard Hall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bond of marriage between the above named parties, on the grounds of the willful desertion and abandonment of the said petitioner by the respondent for the full and uninterrupted period or space of two years, and for adultery committed by the respondent during his marriage with the petitioner.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

38 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of James C. McGuire, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of September, 1888.

FREDRICK B. McGUIRE,
JOSEPH D. McGUIRE,
Executors.

38 No. 3204. Ad. D. 14. Geo. E. Hamilton, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Elizabeth MacLeod, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 14th day of September, 1888.

NORMAN S. BESTOR,
ORSON H. BESTOR,
Executors.

38 No. 3187. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 14th, 1888.

In the matter of the Estate of Henry E. Scott, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Albert F. Fox and Noble D. Larner, Executors, by the will appointed.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of October next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and *Evening Star* previous to the said day.

By the Court. W. S. COX, Justice, &c.

38 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 17th, 1888.

In the case of James M. Green, Administrator of James Ward, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 12th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

38 No. 2836. Ad. D. 13. E. S. McCalmont, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of September, 1888.

Elizabeth Latham vs. James Latham. } No. 11282. Eq. Docket 28.

On motion of the plaintiff, by Mr. Lemuel Fugitt, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce on the ground of desertion.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER and *The Weekly Star* newspaper, printed in Washington.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

38 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Eliza A. Offutt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of September, 1888.

R. P. JACKSON, Ex'r, 3250 M st. n. w.

38 No. 3167. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 17th day of September, 1888.

Christopher C. McKenney et al. vs. Robert V. McKenney et al. } No. 11224. Eq. Docket 28.

On motion of the plaintiffs, by Messrs. E. A. Newman and J. J. Johnson, their solicitors, it is ordered that the defendants, Frederick E. Albright, Robert F. Bopp, Laura Bopp and George E. Bopp, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for partition or sale of parts of certain lots and premises in squares 978 and 1001, in the City of Washington and District of Columbia, and distribution.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

38 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

September 18th, 1888.

In the matter of the Estate of James M. Reynolds, late of Adams Co., Miss., deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by John R. Reynolds, of Dayton, Ohio.

All persons interested are hereby notified to appear in this Court on Friday, the 5th day of October next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased, should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.

38 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

September 13, A. D. 1888.

Louise F. Sauter vs. William W. Sauter. } No. 11277. Equity.

On motion of the plaintiff, by Mr. Oscar Nauck, her solicitor, it is ordered that the defendant, William W. Sauter, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks before said day.

The object of this suit is for a divorce because of desertion and abandonment and non-support.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

38 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Special Term for Orphans' Court Business.

In the matter of the Guardianship of Horton C., Gertrude A. and Robert H. Ryan, infants. } No. 182. Guardianships.

Job Barnard, the guardian of said infants, having reported a sale of lot 31 of R. H. Ryan's subdivision of original lot 19, in square 693, in Washington City, for $6,200.

It is, this 17th day of September, 1888, ordered that the said sale be finally ratified and confirmed on Friday, the 5th day of October, 1888, unless cause to the contrary be shown before that day.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for two weeks prior thereto.

W. S. COX, J,

A true copy. Test: DORSEY CLAGETT,

38 Register of Wills D. C.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of September, 1888.

Samuel Blatchford, Surviving Executor of Richard M. Blatchford, deceased, Plaintiff, vs. William Sprague, Defendant. } At Law. No. 19534.

On motion of the plaintiff, by Mr. Walter D. Davidge, his attorney, it is ordered that the defendant cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover against the defendant the sum of $37,857.03, with interest at seven per cent. per annum from the 20th of June, 1876, according to the particulars of demand annexed to the declaration, less the credits of $10,001.32, therein given. The suit is based upon a judgment recovered against the defendant on the 20th of June, 1876 (as one of the surviving partners of Hoyt, Sprague & Co.), in the Supreme Court of the State of New York, in and for the City and County of New York, by reason of the non-performance of certain promises before that time made by the defendant. It is also based upon a claim for money lent, for money paid, and for money had and received to the use of Richard M. Blatchford, deceased, the testator of plaintiff. It is also based upon an accounting had between the plaintiff and Burr W. Griswold, as executors, and the defendant (impleaded with others), on the 20th of June, 1876, in the Supreme Court of the State of New York, in and for the City and County of New York, in a suit brought by the Berkshire Woolen Company against Hoyt, Sprague & Co. and others. By the Court. W. S. COX, J.

True copy. Test: R. J. MEIGS, Clerk.
37 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 10th day of September, 1888.

Lillian S. Benton vs. Henry Benton. } No. 11285. Docket.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendant, Henry Benton, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce, instituted by the plaintiff, Lillian S. Benton, against the defendant, Henry Benton, on the grounds of desertion of the plaintiff by the defendant for the uninterrupted space of more [than] two years. By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.
37 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 12th day of September, 1888.

Mary M. A. Gibson vs. Horatio G. Schissler. } No. 11240. Docket 28.

On motion of the plaintiff, by Mr. F. P. B. Sands, her solicitor, it is ordered that the defendant, Horatio G. Schissler, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure perfect title to lot 5 in Wm. M. and W. W. Corcoran's subdivision of parts of tract now called Washington Heights, in the District aforesaid.

Provided a copy of this order be published once a week for three consecutive weeks prior to said rule-day in the WASHINGTON LAW REPORTER and the *Daily Critic*.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
37 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 12th day of September, 1888.

William Bresnahan vs. Margaret O'Connell et al. } No. 11263. Docket.

On motion of the plaintiff, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, Sarah McHenry and John Small, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to perfect the title to part of lots numbered 11 and 12, in square numbered 559, in Washington City, D. C., and to sell the same for the purpose of partition. By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.
37 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of September, 1888.

Dora Steele vs. Marshall Steele. } No. 11141. Docket.

On motion of the plaintiff, by Mr. Campbell Carrington, her solicitor, it is ordered that the defendant, Marshall Steele, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce upon the ground of willful and uninterrupted desertion for over five years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.,
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 5th day of September, 1888.

Joanna Hetherman vs. John Hetherman. } No. 11241. Eq. Docket

On motion of the plaintiff, by Mr. H. L. Prince, her solicitor, it is ordered that the defendant, John Hetherman, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bonds of matrimony on the ground of willful desertion and abandonment of the plaintiff by the defendant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk. &c.
36 By L. P. WILLIAMS, Ass't Clerk.

IN JUSTICE COURT OF THE DISTRICT OF COLUMBIA.
BEFORE CHARLES WALTER, ESQ.
The 5th day of September, 1888.

William H. Clagett vs. Pembroke Marshall. } No. 14041. Docket.

On motion of the plaintiff, by Mr. Duhamel, his attorney, it is ordered that the defendant, Pembroke Marshall, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce plaintiff's lien as landlord as against goods and chattels of defendant on the premises, 819 Market Space, in the City of Washington, D. C.

36 By the Court. CHARLES WALTER, Justice, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Genevieve B. Wimsatt et al. vs. Richard Wimsatt et al. } Eq. 11131.

The Trustee in this cause having made sale of lot 25, in square 390, to James M. Lanigan, at and for the sum of twenty-three hundred dollars, as directed by the Court. It is, this 20th day of August, 1888, ordered that the said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 21st day of September, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before the said 21st day of September, 1888.

By the Court. WM. M. MERRICK, A. J.
A true copy. Test: R. J. MEIGS, Clerk.
34 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 12th day of September, 1888.

Cordelia E. O'Reilly vs. Luke O'Reilly. } No. 11252. Docket 28.

On motion of the plaintiff, by Mr. F. P. B. Sands, her solicitor, it is ordered that the defendant, Luke O'Reilly, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure a divorce from the bonds of matrimony upon the grounds of willful desertion and abandonment of plaintiff by said defendant for the full and uninterrupted space of two years preceding the date of the filing of the bill of complaint in this cause.

Provided a copy of this order be published once a week for three consecutive weeks prior to said rule-day in the WASHINGTON LAW REPORTER and the *Daily Critic*.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
37 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888

William Muehleisen, Plaintiff, vs. Carl Reesch, Defendant. } No. 28795. Docket.

On motion of the plaintiff, by Mr. W. J. Newton, his attorney, it is ordered that the defendant, Carl Reesch, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to subject credits of the defendant attached in the hands of August Schwartz to the payment of the debt due by the defendant to the plaintiff.

Provided a copy of this order be published once a week for three successive weeks previous to said rule-day in the WASHINGTON LAW REPORTER and *The Washington Post* newspaper, printed in Washington.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Jane B. Hawkins et al., Plaintiffs, vs. Katharine A. Craig et al., Defendants. } No. 11272. Docket 28.

On motion of the plaintiffs, by Messrs. Carusi & Miller, their solicitors, it is ordered that the defendant, Anna Maria Berlin, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have sale made of all that piece or parcel of ground situate in the City of Washington, in the District of Columbia, known as lot numbered twenty-two (22), in square numbered one hundred and five (105), and the proceeds distributed to the heirs and devisees of Maria B. Craig, deceased, according to the rights of plaintiffs and defendants.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of September, 1888.

Mary M. Frick vs. H. C. Alleman, Surviving Trustee. } No. 11245. Docket 28.

On motion of the plaintiff, by Mr. W. M. Offley, her attorney, it is ordered that the defendant, H. C. Alleman, Surviving Trustee, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure the reappointment of a new trustee in place of H. C. Alleman, Surviving Trustee, to release the deed of trust now outstanding upon lot 21, in S. A. Terry's subdivision of original lot 1, in square 722, in the City of Washington, District of Columbia, the indebtedness secured thereby having been fully paid and satisfied.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
36 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Catharine Bergmann, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of September, 1888.
ROSE KRAEMER,
LOUISE SCHMIDTMANN,
Executrices.
37 No. 3211. Ad. D. 14. Henry Wise Garnett, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Nicola Pistorio, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of September, 1888.
FRANK D. PISTORIO, Adm'r.
37 No. 3209. Ad. D. 14. E. B. Hay, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 7th, 1888.

In the case of Jesse H. Wilson and W. Riley Deeble, Executors of James W. Deeble, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 28th day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
37 No. 2824. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 7th, 1888.

In the matter of the Estate of John Fischer, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Leon Tobriner.

All persons interested are hereby notified to appear in this Court on Friday, the 5th day of October next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
37 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th day of September, 1888.

Louisa Cooper vs. John H. Cooper et al. } No. 11145. Eq. Docket 28.

On motion of the plaintiff, by Mr. James W. Greer, her solicitor, it is ordered that the defendants, John H. Cooper, Isaac Cooper and William Smith, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure reimbursement out of the proceeds of sale of certain real estate which belonged to Lysander Cooper, late of said District, deceased, of moneys paid out by complainant for taxes on said real estate, and in settlement of debts due by said deceased.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
37 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of William W. Curtis, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 8th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 8th day of September, 1888.
CHARLES W. CURTIS, Ex'r,
1401 31st st. n. w., Washington, D. C.
37 Jno. B. Thompson, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Hester A. Clements**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of August, 1888.

EDMUND CLEMENTS, Ex'r, 1016 8th st. n. w.

36 No. 3201. Ad. D. 14. Jos. Shillington, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

August 30th, 1888.

In the case of Charles E. Sutherland, Executor of **Jane Brennan**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 21st day of September, A. D. 1888, at 1 o'clock p. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

36 No. 2765. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Lehnert**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of August next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of August, 1888.

PHILIPPINA LEHNERT, Ex'x,
1217 New Hampshire ave.

36 No. 3205. Ad. D. 14. Ferd. Schmidt, Proctor.

IN JUSTICE COURT OF THE DISTRICT OF COLUMBIA.

BEFORE CHARLES WALTER, ESQ.

The 31st day of August, 1888.

William H. Clagett vs. **Pembroke Marshall.** } No. 14038.

On motion of the plaintiff, by Mr. Duhamel, his solicitor, it is ordered that the defendant, **Pembroke Marshall**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to enforce the landlord's lien upon the goods of defendant for rent due.

By the Court. CHARLES WALTER, Justice, &c.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court.

The 4th day of September, A. D. 1888.

Daniel Pratt Wright, Complainant, vs. **Emma C. Wright et al.**, Defendants. } No. 10308. Equity Doc. 26.

Ordered that the sale made and this day reported by Reginald Fendall, Trustee in this cause, be ratified and confirmed, unless cause to to the contrary be shown on or before the 4th day of October next.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once in each of three successive weeks before said last-named day.

Said trustee states in his report that he has sold, at private sale, part of lot three (3), in square four hundred and twenty-nine (429), in the City of Washington, D. C., described in the proceedings in this cause, for the sum of $37,500.00.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

36 By M. A. CLANCY, Ass't Clerk.

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Abbott's U. S. Practice, vols. 1, 2.
Addison on Contracts, 1847.
Alabama Revised Code, 1867.
Alexander's Texas Digest, 2 vols.
American Law Times and Reports, New Series, vols. 1, 2, 3, 1874, bound; vol. 4, unbound.
American Form Book (Sayler), 1878.
American Law Times Reports, new series, vol. II, 1875.
Atkins' Chancery Reports, vols. 1, 2, 3.

Bacon's Abridgement, vols. 1, 2, 3, 4, 5, 6, 7.
Barbour on Set-off.
Bissett on Partnership, 1874.
Blackstone's Commentaries (by Benjamin) 1879.
Brackenridge on Trusts, 1842.
Bradly on Wills.
Broom's Commentary on Common Law.
Browne on Actions at Law, 1844.
Bundy's Justice—latest.
Burge on Suretyship.

Chitty's English Digest.
Criminal Law (by Washburne), 1878.
Curwen on Abstracts of Title, 1865.
Dallam's Digest, 3 vols.
Digest of American Patent Cases to 1870—Laws, 2 copies.
Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

Elements of Law (questions and answers).
Fell on Guarantees.
Foster on Scire Facias, 1857.
Gilbert on Devises.
Graham on New Trials.
Greenleaf's Overruled Cases, 1840.

Hannon's Digest, vols. 1 and 2.
Hartley's Digest, vols. 1, 2, 3.
Hare on Discovery.

Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
Long on Sales of Personal Property.
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The following extract from an address delivered by Professor Diodato Lioy, of the University of Naples, is of interest, as showing the beginning and growth of individual ownership in land:

Laveleye remarks that "so long as primitive man lives by the chase, by fishing, and by the gathering of wild fruits, he does not think of appropriating the land, and he considers as his own only the objects he has captured or fashioned by his hand. Under the pastoral regime, the notion of territorial property begins to dawn. It is attached, however, only to the space which the herds of each tribe habitually range over; and frequent quarrels break out on the subject of the limits of these ranges. The idea that an isolated individual could claim a part of the soil as exclusively belonging to himself does not yet occur to any one; the conditions of the pastoral life are absolutely opposed to it. At the moment at which the Romans and the Greeks appear in History, they have arrived at a state of civilization that is more advanced and more modern than that of the Germans of Tacitus. They have already passed for a long time from the pastoral regime; they cultivate corn and the vine, and nourish themselves less on flesh. It is agriculture which furnishes them with the greatest part of their subsistence. Nevertheless there still remain very recognizable traces of the primitive regime of the community. Thus cattle would not have been able to serve as a means of exchange had not the greatest part of the land been a common pasturage, to which every one had the right to send his herds and flocks. The two customs are so closely connected that the one cannot be conceived without the other. With individual and limited proprietorship I cannot receive oxen in payment; for how shall I nourish them? If cattle are used as instruments of exchange, it may be inferred from the fact that a great part of the soil is collective property."

Leaving the Greeks aside, we shall accompany Mommsen in his exposition of the origin of property in the soil among the Romans. "Among the Romans the land was for a long time common goods, and the ownership of immovable property is very recent. At first the ownership of property was limited to the possession of slaves and cattle (*familia pecuniaque*) * * * *Mancipatio*, the first and universal form of sale, springs from the ancient period in which ownership did not yet extend to the earth, because it took place only in reference to those objects which the hand of the acquirer should seize. The possession of lands was originally a common possession, and it was undoubtedly divided among the different family unions; only the products were divided according to households. In fact, the agrarian community and the city, constituted by family unions, were connected by close relations with each other; and long after the founding of Rome, we still meet true communists who lived together and cultivated the soil. The language of the old laws shows that riches at first consisted in herds and real rights, and that it was only much later that the soil was divided as private property among the citizens. The original land estate was called *heredium*, from *heres*, and it contained only two *jugera* (about one acre and a third), a space like the extent of a garden, and little greater than the small field inclosed by hedges among the Germans. If the two *jugera* did not suffice to support a family, it received a part of that common land of the tribe or State, which was the original *ager publicus*, and which gradually grew through the conquests of the kings and of the republic, and which was very soon usurped by the patricians. This usurpation was the occasion of the struggle of centuries between the patricians and the plebeians, till the time of the emperors; and to the plebeians it was a question of life. A group of families which formed a clan inhabited a village (*vicus* or *pagus*): the union of clans constituted the nation (*populus*) or the State (*civitas*); and the State had, as its center, a fortified place or a citadel, which was always situated upon a height."

In its development, property followed the status of the persons connected with it. At first the only proprietors were the *cives optimo jure*. Their property was called *dominium Quiritarium*, and they were able to vindicate it from any one. The necessities of life compelled the recognition of another species of property, called that *in bonis* or *dominium bonitarium seu naturale*, to which the ancient law did not concede any right of action. The prætor supplied this by the *actio Publiciana*, which took the place in this connection of *vindicatio*. The citizens no sooner became all equal under the Empire than these old distinctions disappeared, and the right of property consisted of these three elements: 1. The right to use the thing without otherwise appropriating its fruits—that is, to apply it simply to one's own use, advantage and enjoyment (*Jus utendi*); 2. The right to gather the fruits produced by the thing (*Jus fruendi*); 3. The right to draw from the thing a utility by changing it, transforming it, and even destroying it (*Jus abutendi*), which, in the juridical language of the Romans, did not mean to make a bad use of it, as it is written in the Institutes: *expedit reipublicæ ne sua re quis male utetur.*

Under these free proprietors lived the cultivators or farmers and the slaves. The former were also called *rustici*, *originarii*, *abscriptitii*, *inquilini*, *tributarii*, *censiti*, words which all indicated a class of men who lived on the land and were engaged in agricultural labors. They were not slaves; they were able to marry at will, and to have recourse to magistrates on occasion of grave injuries to their persons, or in reference to exactions that went beyond use and wont. They constituted a part of the estate like the cattle (*servi terræ glebæ inhærentes*), and they were not entitled to abandon it under any pretext, the

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proprietor having a right to reclaim them even from among the ranks of the clergy. The fruits of the land belonged to them, and they owed to the proprietor only an unalterable proportion in commodities (*redditus annuæ functionis*) fixed by custom. The slaves possessed a *peculium*, but it was always at the disposal of their master.

The Germans—as we are told by Cæsar, Tacitus and Ammianus Marcellinus—had likewise agriculturists and slaves. The former were hereditary cultivators of the lands which were conceded to them for a regulated consideration; the latter were bound to domestic services or to the cultivation of the lands reserved for the daily uses of the family. In the bosom of the families were formed the bands which elected a chief for some distant expedition. Tacitus says: "If a tribe languishes in the idleness of a long peace, the principal youths go to the nations which are at war, because repose is irksome to this people. The warriors become illustrious in the midst of dangers; and it is only by means of war that they can preserve many followers."

The Roman Empire was invaded by these bands, which brought with them the organization of the tribe, with the addition to it of the bond of military subordination. The chiefs spread themselves over vast domains, where they lived along with a few companions in arms. The organization of the tribe could not be altered by their change of place. In Germany the sovereignty in relation to general affairs belonged to the assembly of the heads of families or proprietors; and in reference to particular affairs, to every single head of a family. This last species of sovereignty had a double origin and double character. On the one hand, it had the bonds and the customs of the family, the proprietory head being the chief of the clan, surrounded by his relatives, down to the most distant grade, and in every kind of condition; and, on the other hand, it was founded upon conquest and force, a part of the territory having been occupied with arms in their hands and the conquered having been reduced almost to slavery. After the conquest the reunion of the common assembly became always more difficult; and consequently there remained only the second form of sovereignty, which extended itself not only over the cultivators and slaves of the Roman world, but also over the free men who had come from Germany. Guizot, accordingly says: "How is it possible for those who are living beside a chief who had become a great proprietor possessed of a thousand means of influence, and whose superiority increased every day, to preserve long that equality and that independence which the companions of the same band formerly enjoyed? Evidently this could not be. Those free men who, after the invasion, still lived for some time around their chief, were not long in becoming divided into two classes; some received benefices, and, having become proprietors in their turn, they entered into the feudal association; others, always fixed in the interior of the domains of their ancient chief, fell either into a condition entirely servile, or into that of cultivators working a part of the land under obligation to discharge certain services or performances."

Three centuries had passed from the time of Tacitus, and temporary possession had become converted into proprietorship. The first act by which the barbarian invaders affirmed their power over the conquered Romans was the partition of the lands. Thus arose the feudal system (*feodum*, from *fe* or *fee*, wage, and *od*, possession), which ruled property during the Middle Ages. However, by degrees the kings from *grands fieffieux* became really heads of the nation, and claimed for themselves all the sovereign prerogatives. Nevertheless those thousand abuses did not cease which had confused the persons with the land, to the shame of all the powers of the legists, who strove to bring about the triumph of the conception of the Roman proprietorship and of absolute monarchy, which attributed to the king, not the *dominium eminens*, but the full proprietorship in the goods of their subjects, as appears from this passage in the instructions written by Louis XIV for the Dauphin: "Everything that is found throughout the whole of our States, of whatever nature it be, belongs to us by the same title. You ought to be persuaded that kings are absolute lords, and have full right of disposal over all the goods possessed by ecclesiastics and laymen so as to use them at all times."

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

ZECHARIAH CHAFEE
vs.
SAMUEL BLATCHFORD *et al.*

Decided June 4, 1888.

1. A deed of assignment, purporting to convey "all the property, real, personal and mixed, not exempt from attachment which the parties of the first part or any or either of them, have and hold in the City of Washington, in the District of Columbia," is sufficiently comprehensive in its description of the property.
2. A man in debt may prefer any of his creditors, and may execute a mortgage to secure a debt of a certain amount payable at a certain time; but the unsecured creditors are entitled to the equity of redemption, and if the deed by its terms so covers up and screens such equity as to obstruct access to it by the unsecured creditors, the whole instrument is fraudulent.
3. A deed of this character examined and declared to be fraudulent.
4. An assignment is void which, in addition to imposing conditions of delay upon the creditors who come in under it and excluding those who do not assent to such conditions, reserves the surplus for the benefit of the grantor.
5. A deed, purporting to convey lands in this District, if acknowledged out of the District must be accompanied by a certificate of the public officer having cognizance of the fact that the officer taking the acknowledgment was at the time the officer he purported to be.
6. The Recorder of Deeds is only authorized to record deeds acknowledged in the manner prescribed by law, and an instrument not so acknowledged, although recorded, is no protection of the property against creditors.
7. An assignee whose deed appears fraudulent on its face cannot have the assistance of a court of equity to quash an attachment laid upon the property by the plaintiff in a suit at law against the assignor, on the ground that such plaintiff's debt is barred by limitations, when the defendant himself has not interposed such a defense to the suit.

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The defense of limitations is the privilege of the debtor alone.

8. A deed, which at the time of its execution was fraudulent and void as against a creditor, cannot, because lapse of time has barred the creditor's debt, become thereby valid or place the assignee in a position to claim affirmative relief in equity against such creditor.

Bill in equity to restrain proceedings by attachment. Hearing in General Term in the first instance.

The case is sufficiently stated in the opinion.

WM. E. EARLE, J. J. DARLINGTON and M. F. MORRIS, for complainant.

WALTER D. DAVID, for defendant, Samuel Blatchford.

MR. JUSTICE COX delivered the opinion of the Court:

I am prepared to announce the conclusions of the Court in the case of Chafee *vs.* Blatchford, although I have not been able to prepare such an opinion as the gravity of the case and the importance of the questions involved would require.

The litigation arose out of the following condition of affairs: A long time ago Richard M. Blatchford, who was the father and testator of the present defendant, purchased the acceptances of the firm of Hoyt, Sprague & Co., of New York, before maturity, to the amount of some $33,000, the last of which is said to have matured in the year 1874.

In 1875, Blatchford brought a suit in New York against the surviving members of that firm, Amasa Sprague, William Sprague, and the other parties, named Knight, Greene, Gallup and Hoyt, but personal service was had upon Gallup only, and in April, 1875, a special judgment, as it was called, was rendered in pursuance of the statutes of New York. That was a personal judgment against Gallup who had been served with process, a judgment which could be executed also against the partnership property wherever it could be taken, but which could not have been enforced against the private property of the parties who had not been served with process. Judgment was then rendered for $41,000 and some cents.

Blatchford died in September, 1875. His son, the present defendant, and another person, who has since died, were appointed his executors. In April, 1875, the Berkshire Woolen Company, a judgment creditor of Hoyt, Sprague & Co. brought a general creditors' suit in New York against one Augustus D. Juilliard, who had been appointed receiver of the effects of Hoyt, Sprague & Co. in another suit between the surviving partners of that firm and the representative of a deceased partner. In that bill they prayed that this receiver be made receiver for the benefit of the creditors of the firm, and an attempt was made to make parties to the suit, of all the surviving members of that firm.

It is one of the controverted questions of fact in this case whether William Sprague was ever rightfully represented by counsel in that case so as to be bound by any decree passed in it. At all events, the creditors of the firm were invited to present their claims and they were audited, and among the claims so audited was that of the deceased, Richard M. Blatchford, and a decree was finally passed apportioning to him his *pro rata* share of the assets in the hands of the receiver. That decree was passed June 20, 1876. The nature of that decree and the effect of it is another one of the controverted questions in this case.

On the 14th of May, 1878, the defendant and his co-executor, then living, brought suit on the common law side of this Court against William Sprague, one of the surviving partners, and issued an attachment against his property in this city on the ground of his non-residence. That attachment was levied upon the property. In the declaration in that case there are several counts. The first one is upon the decree in the Juilliard suit of June 20, 1876, treating that as a personal judgment against Sprague. The other counts are for money had and received, and money loaned, and money due on an account stated, etc. The object of that suit, it is said in the suit now before us, was to test the validity of two certain deeds which were executed by William Sprague and the other surviving members of the firm which I have named, to Zechariah Chafee, in trust.

Nothing further was done in that attachment proceeding or the suit; the reason assigned for which is, that similar suits were pending in certain courts at the North, and the parties desired to wait the result of that litigation.

On the 11th of October, 1884, Chafee files his bill in this Court against the defendant Blatchford, and the prayer of that bill is that the attachment be declared null and void, and that the defendants be perpetually restrained from further proceedings thereunder and the plaintiff be allowed by decree of the Court to sell the real estate under the powers contained in the deeds to him, free and clear of the cloud created by said attachment, or that the same be sold under the order of the Court, etc.

Of course, the first question which presents itself to us is, what title is exhibited by Chafee claiming under these several deeds. There are two deeds which were executed to him, the first one being dated November 1, 1873, and the parties to it are the A. & W. Sprague Manufacture ing Company, "a corporation created by the General Assembly of the State of Rhode Island and transacting business in the City of Providence," William Sprague, of South Kingstown; Amasa Sprague, of Cranston; Mary Sprague, widow of William Sprague, deceased, of said Providence, all in said State, and the said Amasa Sprague and William Sprague as copartners doing business under the firm of A. & W. Sprague, all parties of the first part; and Zechariah Chafee, of said Providence, as party of the second part.

The deed recites an indebtedness amounting in the aggregate to about the sum of $14,000,000, which the parties are desirous of funding and securing, and it goes on further to recite that the parties "have executed their 16,500 negotiable promissory notes, all bearing even date with these presents, and made payable to the order of said A. & W. Sprague, and by them indorsed, payable three years from January 1, 1874, with interest from January 1, 1874, payable semi-annually at the rate of 7 3–10 per centum per annum till said principal sum is paid,

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whether at or after maturity, and all installments of interest in arrear to bear interest at the rate aforesaid till paid," etc., which notes are to be passed to creditors who may come in within nine months and take the benefit of the deed.

This deed conveys "all the property, real, personal and mixed, not exempt from attachment by law, which the parties of the first part, or any or either of them, have or hold in" certain towns in the State of Rhode Island, in the State of Massachusetts, in the State of Maine, in the State of New Hampshire, in the State of South Carolina, in the City of Washington, D. C., and also in Connecticut, naming them. It provides, further, that the trustee may at any time, even before default, as well as after, enter upon the estates and take full and absolute possession and control of the same" and in their or his discretion to continue to run and operate, or to close the mills or print works of said manufacturing company, or any or either of them, as said trustees or trustee for the time being shall deem for the best interests of the creditors." And in case of default in the payment of the notes or the interest due, then the trustees "may in their or his discretion, and upon the request in writing of the holders of one-fifth in amount of the notes then issued and outstanding under these presents," enter upon and sell the property, etc., and when the sale takes place, they are, out of the proceeds thereof, to provide for the payment of expenses, including the expenses of carrying on the business "or in the execution of any other of the trusts hereby created." Secondly. "to apply the residue to the payment of all debts and liabilities which shall be brought in under these presents and remain outstanding as aforesaid," accounting to the parties of the first part, etc., "for the surplus, if any, that may remain after the full payment thereof."

Another provision is, that "no trustee under these presents shall be answerable or accountable for any loss which may happen to said trust estate or property unless the same shall happen by his own neglect or default."

On the 6th of April, 1874, another deed was made by William Sprague alone, in which he recites that he is indebted for divers sums of money and desires to appropriate his estate and effects to the payment of the same, and therefore conveys to the said Chafee "all his right, title and interest, legal or equitable, in or to all the property of the grantor described or referred to in the trust deed of mortgage dated on the first day of November, 1873, * * * to have and to hold the same in trust, to sell the same at public or private sale and convert the same into money, and the proceeds thereof to apply, first, to the payment in full, if sufficient, otherwise ratably, of all the claims against the said William Sprague provided for in said trust deed of mortgage of November 1, 1873, which have been, or shall within nine months from November 1, 1873, be brought in and extended for the term of time provided in said trust mortgage." And the trustee is further authorized "to run said mills and print works, or either or any of them, or to allow the grantor to run the same, or any part thereof, if for the best interest of the creditors; the profits of the same being receivable by the aforesaid grantee for the purpose aforesaid; and in case the same are thus run by him or otherwise, he shall not be liable personally for the expenses or losses arising therefrom, but the same shall be chargeable to the trust fund vested in him."

The first objection made on the part of the defendant to the title exhibited on these deeds is that the language is not definite and specific enough to embrace the property of the Spragues in this District. The language is: "All the property, real, personal and mixed, not exempt from attachment by law, which the parties of the first part, or any or either of them, have and hold in the following city and towns in the State of Rhode Island * * * and in the City of Washington, in the District of Columbia."

We have no doubt the language is comprehensive enough to embrace the property here.

The next question is whether these deeds are fraudulent on their face as against creditors. We have no doubt from what appears in the record here, that at the time of the execution of the deeds, the grantors therein were in embarrassed, if not insolvent, circumstances; in fact the bill itself recites that at that time, the A. & W. Sprague Manufacturing Company, the company of which William Sprague was a member, "found itself unable, in consequence of the financial embarrassment then overspreading the country, to meet its indebtedness." We have no doubt, either, that, at that time, Blatchford was a creditor, so that he was one of those persons as to whom this deed was fraudulent and void, if it was such a deed as a creditor in embarrassed circumstances has no right to execute.

The question of the validity of these deeds has been before several courts and has been decided in different ways. It appeared first in the case of De Wolf *vs.* Sprague Manufacturing Company, reported in 49 Conn., 282. The Court of last resort of that State held the deeds to be fraudulent and void and in the United States District Court for Connecticut a similar decision was rendered by Mr. Justice Shipman. After that the question came before the Court of last resort of the State of Rhode Island and was discussed in the case of Austin *vs.* Sprague Manufacturing Company, 14 R. I., 464, and that Court upheld the deed which was executed in 1873 and which has been called a deed of trust or mortgage. The second, which was more in form like an assignment, was not disposed of in that case. The United States Court in that State also followed the ruling of the State Court.

A case has been cited from 71 Maine, but upon examining that case I find that it held simply that a creditor in Rhode Island who *assented to the deed and took the benefit of its provisions*, could not go into the State of Maine and there impeach it as fraudulent. Therefore, it does not touch the question now before us.

Now, viewing this question in the light of general principles, and unaffected by the local legislation or local decisions, it seems to us that the reasoning of the Court in Connecticut is more satisfactory and entitled to the greater weight. The common sense of the matter may be expressed, I think, in a very few words. A man in debt has a right to prefer any creditor or creditors and he may execute a mortgage to secure a debt of a certain amount, payable at a

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certain time. When he does that, he has a well defined residuary interest in himself, in the shape of an equity of redemption, to which his creditors may have recourse. But if such a conveyance covers up and screens the equity of redemption and puts obstructions in the way of access to it, by his unsecured creditors, that is sufficient at once to visit the instrument with condemnation as tending to hinder, delay and defraud his creditors.

If you look at the provisions of this conveyance you will find them very peculiar. Here is a deed which purports to be a deed of trust or mortgage. It is a blanket mortgage which covers everything which the grantors own everywhere, and the whole indebtedness covers every piece of property in every jurisdiction. The equity of redemption in any one part of that property, any specific part of it, is absolutely valueless because it is subject to incumbrances to the amount of four or eight million dollars, the amount of claims which were funded and are represented by the notes issued under this deed of trust. Nobody would purchase an equity of redemption in any specific part of this property, subject to such an incumbrance as that; so that no creditor could have any relief through a sale of the mere equity of redemption in any part of this property. There is no manner in which a creditor could have relief except by by having the whole property sold free of incumbrance, the debts paid and the surplus appropriated to the satisfaction of unsecured debts. But if this deed stands good, this property never can be sold except at the option of 20 per cent. in amount, of the creditors who have chosen to come in under its provisions.

It provides that notes shall be issued to the creditors who assent to this arrangement, bearing interest at 7 3-10 per cent., payable semi-annually, the interest to be compounded semi-annually when the installment is in arrears. A sale can be made only in case one-fifth of the creditors shall request it in writing, after the maturity of these notes, which run three years. So that these creditors have a pretty good thing of it, or may have, if the management of that property results in the payment of 7 3-10 per cent. interest per annum, and they may let it run on indefinitely. Four-fifths of the creditors, or rather creditors representing debts amounting to a single dollar in excess of four-fifths of this indebtedness, may protract this arrangement as long as they choose. It is at their option, and they may keep all other creditors, not assenting, out of all access to this residuary interest. This is an artificial obstruction added to the intrinsic difficulty of getting at property scattered through so many jurisdictions.

But that is not all. It is provided that the trustee may carry on the business and shall not be responsible for any losses; the losses, in other words, will come out of the estate. So that not only is the equity of redemption covered up and placed beyond the reach of the creditors, but it is also exposed to the risks of a continuation of this business. It seems to be a very cunningly devised contrivance for enabling the debtor in person, or his trustees, to conduct the business and keep the creditors off, so that he may have the chance at some time in the future of retrieving his fortunes while at the same time the creditors are exposed to the risk of further loss and disaster. I think the statement is made that the running of the mills did continue for eight years, and there was nothing to prevent their going on indefinitely if it was successful and if a trifle more in amount than four-fifths of the creditors chose to continue. The consequence is, that the unsecured creditors are completely under their control, and if they have any remedy at all it is postponed indefinitely by those disposed to continue the risk, and vanishes into thin air. That is the case if we treat this as a mortgage. We can hardly imagine an instrument which can more effectually hinder and delay these unsecured creditors who did not come in under the deed and who desire to have a prompt collection of their debts.

But if we look upon it as an assignment, and especially if we consider it in connection with the last deed of 1874, which was, in form, an assignment and which simply conveys the property on the same trusts, it is still more manifestly vicious, because of the enforced conditions of delay which are imposed on the creditors who come in to get the benefit of these deeds. They are not to have the benefit of the property at all, unless they will at once consent to a delay of three years. All the creditors who do not assent to the conditions are excluded entirely, and then there is a reservation of the surplus for the benefit of the grantor himself. These are features of an assignment, made professedly for the benefit of creditors, which condemn it as fraudulent and void.

Now, this is the view which we take as to the character of these deeds, looking at them simply in the light of general principles, and we find that the decisions of the highest Court of Connecticut and of the District Court of the United States in that State concur with us in that view. I read an exact from the opinion of the Court of Errors of Connecticut. That Court said:

"But the deed (of November 1, 1873) contains other features which impart to it a fraudulent character, and render it void as a mortgage of real estate in this State as against non-assenting creditors. It empowers the defendant, Chafee, as trustee, and any person who may succeed him in the trust, under its provisions, to run and operate the mills and print works of the A. & W. Sprague Manufacturing Co. at the expense of this trust estate, and for the benefit of A. & W. Sprague, Amasa Sprague and William Sprague, and of their creditors as well as of the Manufacturing Company and their creditors, for a period of time limited only by the trustee's discretion, unless one-fifth in amount of the holders of the notes issued and outstanding under the deed intervene, and request him in writing to dispose by sale of the estates. The effect, therefore, of this power, if executed, and losses to be sustained in its execution, would be to enlarge the incumbrance upon the trust estates, and diminish the value of the only property or interest to which the non-assenting creditors could resort to obtain satisfaction of their claims—that is, the equity of redemption in the mortgaged premises.

"If profits should be made in the execution of the power, they would inure to the benefit of the assenting creditors of the Spragues, as well

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as of the assenting creditors of the company. The non-assenting creditors would thus be hindered, delayed and defrauded."

In the United States District Court, Judge Shipman says:

"The mortgage deed, and the assignment, taken together, attempt to convey the entire title of the grantors in the conveyed property to a trustee for the benefit of the creditors of the corporation, and of Amasa and William Sprague, individually and as a copartnership, and of the other stockholders, giving a preference to those who should, within nine months from November 1, 1873, extend the time for the payment of their debts for three years from January 1, 1874. The trustee is authorized to run either or all of the mills and print works which belonged to the corporation, or to allow the grantor to run the same, the profits being receivable by the grantee, and the expenses to be chargeable to the trust fund. Thus the property which was a fund for the payment of debts, having been placed beyond the reach of non-assenting creditors, is further subjected for an indefinite time to the hazard of the losses resulting from the running of the mills, and the manufacturing expenses are chargeable to the entire fund, as well that derived from the individual property of the Spragues as from the corporate property. The intent of the mortgage and the assignments was, not only, by a set of conveyances, professedly for the benefit of all the creditors, to put the entire estate into the hands of a trustee for a period not necessarily definite and determined, but also to subject the property against the will of non-assenting creditors, for a like indefinite time, to the hazards of a business exceedingly extensive, and of uncertain pecuniary profit. "No debtor has a right thus to postpone or put in peril the rights of his creditors without their consent and a conveyance which attempts so to do, or which is executed for the purpose of depriving creditors of their to enforce their just claims against the property of their debtor by placing it beyond their reach or control for an unlimited, indefinite or uncertain period, is, in conscience, as well as in law, fraudulent."

And he cites the De Wolf Case. The Court continues:

"This legally fraudulent character is apparent upon the face of the deeds, and parol evidence is of no avail that both the grantors and the majority of the creditors thought that the arrangement was the best for the interest of all the creditors, and that the experiment would be a success, because neither the grantors nor a majority of the creditors have a legal right in an assignment for the benefit of all the creditors, to subject the property of the assignor for an indefinite time to the hazards of enterprises which are, not only far more extensive than those incidental to the winding up of the business, but are a continuation of the business of the debtors to its full extent. The cases which justify the carrying on of a manufacturing business by a trustee until the stock is exhausted, or the purchase of new materials to enable the stock to be worked up, have no analogy to this case in which the deeds contemplated the carrying on by the trustee of a vast business. Notwithstanding the motive of the debtors and the assenting creditors was not tinged with bad faith, the deeds were of such a character that the law pronounces them to be fraudulent towards non-assenting creditors, and refuses to lend its aid to the coercion which would compel them to enter into a business which they disapproved."

In answer to this, however, it is claimed on the part of the complainant, that these deeds are a Rhode Island transaction and that their validity is be determined by the law of that State as expounded by its highest tribunal, and inasmuch as they have been sustained by the highest Court of that State, they must be regarded everywhere else as valid, and some authorities are cited upon that question.

I think, however, we are relieved from the necessity of deciding that point because it is founded on a mistake of fact, and that, so far as the property in this District is concerned, we have to do with a District of Columbia transaction. In respect to these deeds we find that they were first acknowledged in Rhode Island. But there was no certificate attached to the deeds, that the officers who took the acknowledgments were competent to do so. Our statute provides that the acknowledgment of a deed may be made before any of certain named officers, among whom is a notary public, but it is further provided, that in the case of any acknowledgment made beyond the limits of the District, the certificate of the same shall be accompanied by a certificate of the register, clerk or other public officer, having cognizance of the fact, that the officer who takes the acknowledment was, at the date of the acknowledgment, in fact the officer he purported to be.

Then it was further provided by the Act of April 29, 1878, (20 Stat. at L., 39,) that "All deeds, deeds of trust, mortgages, conveyances, covenants, agreements, or any instrument of writing *which, by law, are entitled* to be recorded in the office of the Recorder of Deeds, shall take effect and be valid *as to creditors* and as to subsequent purchasers for valuable consideration without notice, from the time when such deed, deed of trust, mortgage, conveyance, covenant, agreement or instrument in writing shall, *after having been acknowledged, proved or certified, as the case may be*, be delivered to the Recorder of Deeds for record, *and from that time only.*"

The recorder is only authorized to record deeds acknowledged in the manner prescribed by law. As this deed was acknowledged in the first instance in the State of Rhode Island, unaccompanied with the certificate of the proper officer, it could not have been, under this law, admitted to record in this District, and not being an instrument which the law authorized to be recorded, it would not have protected this property against creditors, and for that very reason Mr. Sprague came on here immediately after and re-executed the deeds in this District. The first deed was executed by him on December 1, 1873, in Providence, R. I., and on December 4 in Washington. The second deed was executed April 6, 1874, in Providence, and April 15 in Washington, and the execution here is the only execution of the deeds which gives them any operation here at all, as against creditors, and which, if the deeds had been in other respects valid, would have protected the property from

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attaching creditors. So that we feel at liberty to apply to these deeds all those general principles on the subject of fraudulent deeds which we should hold applicable to deeds executed by a resident here, in this District, and do not feel hampered by the decision of the Courts of Rhode Island. In that view of the case, we have then a party applying to us for affirmative relief, claiming title under deeds which, in our judgment, are void as against creditors, and therefore not valid as against this defendant, representing the claim of Blatchford, who was a creditor at the time these were executed.

But there is another position taken on the part of the complainant, viz.: that this debt of Blatchford is barred by the statute of limitations, and he is no longer, therefore, a creditor who is hindered and delayed from collecting his debt by the operation of the deed. The deeds are dated respectively in 1873 and 1874. The last of the acceptances, it is said in one of the briefs, matured in 1874. This suit (the common law suit) was not brought until 1878, just one year later than the expiration of the statutory period. Now this position is only good upon the theory that the debt of Blatchford has ceased to be a debt, by the mere lapse of time; and that is entirely at war with the settled rules of law relating to the statutes of limitations. I think it is sufficient to state it to insure its rejection even by counsel representing the complainant. The defense of limitations, as we all know, is one which it is the privilege of the debtor to make, or not, as he pleases. The law does not make it for him, nor does the law pronounce any debt extinguished by virtue merely of the lapse of the statutory period. The debt continues the same, and may be collected or reduced to judgment unless the defense of the statute of limitations be interposed; and if the debt can be collected in any other way than by an action barred by the statute, as by realizing from collateral securities, that may be done.

Now, so far as we know or can anticipate, the plaintiff in the law suit may obtain personal service on William Sprague, or Sprague himself may choose to appear and allow judgment to go by default, or may forbear to plead the Statute of Limitations. Nobody can plead it for him. Chaffee cannot appear in that suit and plead. It is a controverted question whether he may appear in the attachment proceeding and move to quash it on the ground that it is levied on other property than that of the defendant in the suit, but certainly he could not plead the Statute of Limitations as to the action. Nobody could plead that except Sprague himself, and we cannot assume any more that he will, than that he will not.

This deed is none the less a hindrance and obstruction to this creditor because another hindrance or obstruction may now, in consequence of the lapse of time, be interposed by the debtor in the shape of a plea of limitations. The mere possibility that he may avail himself of the statute does not render the deed any the less a hindrance or obstruction to the collection of this debt. And again, if this deed was fraudulent at the time when it was executed, as against Blatchford, how can it come, through lapse of time, to be valid? If Blatchford chooses to bring suit against Chafee, the latter in defense, may be able to avail himself of the lapse of time. But the deeds cannot become valid by the lapse of time, if void in the first instance, so as to give substantive rights and put him in the attitude of a claimant entitled to affirmative relief.

This, therefore, seems to us to dispose of the question of limitations, and it really does not figure in this case at all, in our judgment.

It therefore remains for us to announce the result we have reached, and that is, that this complainant is not entitled to relief and we must dismiss the bill. In doing that, we do not express, and are not called upon to express, any opinion upon the question whether the decree against Julliard upon which the complainant in the law suit relied, was a decree *in personam* against Sprague, or whether the defendant must rely upon his original cause of action. We are not called upon to express any opinion as to the regularity of the attachment or the mode in which it may be resisted or set aside. All we profess to do now is to deny relief and dismiss the bill on the ground, that the title deeds on which the claim for relief is founded are void and fraudulent as against the defendant, as one of the creditors of Spragne.

Book Notice.

Railroads, Warehouses and Eminent Domain. By W. H. Manier, Esq. Price, $3.50.

The above work is a compilation of the Statutes of Illinois upon the subjects mentioned, annotated with the decisions of the Appellate and Supreme Courts of Illinois, of the Courts of last resort in other States and of the Supreme Court of the United States. It is copyrighted by D. W. Lusk and published by The Railway Age Publishing Company of Chicago, to whom all orders should be sent. The following letter to Mr. Lusk from Judge Scholfield of the Supreme Court of Illinois indicates the merits of the work:

MONTICELLO, ILL., *Sept.* 1, 1888.

MY DEAR SIR:

I have, with such care as the limited time within my command will allow, examined the "Law of Eminent Domain, Railroads and Warehouses," as compiled by W. H. Manier, and I take pleasure in saying that, in my opinion, Mr. Manier has performed his work with industry and conscientious fidelity. So far as my investigation enables me to speak the constitutional and statutory provisions and the substance of the language of the opinions of the Supreme Court of this State relating to these questions are accurately given. As a digest of the laws and decisions upon the questions it would seem to me that the work will be indispensible to the Illinois practitioner, and of great value to the practitioner of other States where kindred questions must constantly arise for consideration.

Truly, &c.,

JOHN SCHOLFIELD.

D. W. LUSK, ESQ.

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Current Events.

INTERSTATE COMMERCE—THE CAR LOAD CASES—DISCRIMINATION.—The Interstate Commerce Commission is a tribunal of special and peculiar jurisdiction, empowered to hear and determine complaints arising under the interstate state commerce law. This is what is sometimes denominated a "large contract," as it empowers the Commission to regulate the tariffs of freight charges of all railroad or other carriers who transport merchandise from one State to another, to reduce exhorbitant charges and suppress discrimination. It may well be supposed that with these powers and duties the office of the Commission will not be a sinecure.

There are now pending before the Commission three cases, known as the "carload cases," which involve the question, how far railroads may discriminate in their charges between shippers of large and small lots of merchandise. On the side of the shippers it is alleged that the discrimination against shipments of less than a carload is excessive, and that the technical "carload" has been arbitrarily raised from 20,000 pounds to 24,000 pounds, and that the railroads may raise the limit still higher. On the other hand, the railroads say that the discrimination is not unreasonable, that they are entitled to make the same difference in their treatment of their customers that all tradesmen make between those who buy at wholesale and retail. They insist that they are entitled to extra compensation for the care, trouble and expense incident to the booking, billing, receiving, handling and delivering of numerous small packages.

As usual in such cases, there is a great deal to be said on both sides; witness the fact that the testimony in the carload cases occupies over five hundred printed pages. As the matter is still *sub judice* it would not tend to edification for us to express any decided opinion on the points in controversy, but ti suggests some ideas which, although they may be crude, may yet be worthy of chronicle. It has occurred to us that the commercial classes of the United States have gotten more than they bargained for when they demanded the interstate commerce law, or at least something different from what they desired. For nearly a hundred years Congress has held the power of regulating commerce among the several States. It has heretofore seldom exercised the power and never in a thorough and efficient manner. It has been in this matter the veritable "King Log" of the ancient fable, and it is not impossible that in the interstate commerce law it has been transformed into the "King Stork." It is very desirable, certainly, that carriers and especially railroad corporations, should be subjected to such regulations as will suppress extortion, favoritism, discrimination and all the abuses which led to the enactment of the interstate commerce law, but we are strongly inclined to the opinion that those who expect a prompt suppression by the commission of all the inequitable practices charged against the railroads will be at least partially disappointed. The Commission, with the best intentions no doubt, will render decisions that will soon attain the dignity of precedents, and in the course of time, and probably a very short time, there will be formulated a system of carrier law quite at variance with the views of the promoters of the interstate commerce act. Great corporations are formidable adversaries in a fenced field of law, and usually emerge from a contest with individuals flushed with triumph, crowned with the palm and laden with the substantial spoils of victory.

The formation of a system of law by judicial construction is a process quite familiar to most of our readers. The law of "negligence" and "contributory negligence" is a striking example of such creation. One Court adopts and refines upon the ruling of another, making new distinctions and adding further conditions, and a third follows in the same line. All these changes tend in the same direction, and a slight examination of the multitudinous actions for personal injuries occasioned by negligence, in the current reports of the day, will satisfy any one that, in ninety-nine out of a hundred of those cases, the judgment is rendered against the plaintiffs on the ground of their own contributory negligence, or that of their intestates; and further, that in ninety-nine of a hundred of the cases so decided, the victorious defendants are railroad companies or other corporations.

We do not, of course, propose to prophecy, but would not be in the least surprised if the Interstate Commerce Commission should, in this respect, follow in the footsteps of other courts, and ultimately formulate a system of rulings as favorable to aggregated capital as those to which we have adverted. Whenever the discretion intrusted to a court is wide, the chances of its abuse are multiplied, and, besides, a court never adheres so rigidly to the maxim, *stare decisis*, as when the decision in question is its own.

These, however, are first impressions and mere surmises, and we are not at all willing to be concluded by them. The interstate commerce law was enacted to do even-handed justice, and to curb, not to license, undue exactions by the great carrier corporations, and it would be a matter for serious regret if for any reason it should fail to accomplish its purpose.

Notes.

Under a statute providing that "a man with another man's wife, or a woman with another woman's husband, found in bed together, under circumstances affording presumption of an illicit intention, shall each be punished," etc., an indictment charging that the respondent "being then and there a man," was found in bed with another man's wife, "under circumstances affording presumption of an illicit and felonious intention," is bad for lack of allegation as to what the "illicit intention" was. The rule as to when it is sufficient to charge an offense in the words of the statute was stated in State *vs.* Higgins, 53 Vt., 191, being quoted from Mr. Pomeroy, and was thus: "Whether an indictment in the words of a statute is sufficient or not depends on the manner of stating the offense in the statute; if every fact necessary to constitute the offense is charged, or necessarily implied by following the language of the statute,

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the indictment in the words of the statute is undoubtedly sufficient; otherwise not." That rule in substance has always been the test applied to indictments in this State. Under it this indictment is insufficient. The "illicit," as its derivation indicates, means that which is unlawful or forbidden by the law. Bouv. Law Dict.; Webst. Dict. It is not claimed that every illicit intention would warrant a conviction under this statute. It must be a particular lawful intention. Therefore, as the indictment stands, all the allegations might be true, and the respondent be not guilty. The illicit intention might have been to steal, burn or murder, as well as to have unlawful sexual connection. Vt. Sup. Ct., Feb. 24, 1888. State *vs.* Miller. Opinion by Veazey, J.—*Albany Law Journal.* [There is a refreshing interest in this paragraph. To go back to the very beginning, the statutory provision as to the evidence which is to infer guilt of conjugal infidelity is peculiar. The accused must have been found "in bed" together. The law takes no cognizance of the offense unless it be committed "in bed." Then to most minds it would have appeared that the mere fact of a man's being found in bed with his neighbor's wife was sufficient to "afford presumption of an illicit intention." But not so apparently in the eyes of the framer of the statute. There must be other "circumstances" concurring with the common couch ere guilt can be inferred. Again turning to the indictment, there is a novelty in the description of the accused as having on the occasion of the offense "been then and there a man." In the view of the prosecutor no doubt the accused might at some other place or at some other time have been a woman, but that is of no moment, seeing that at the place and time of the alleged offense he was "then and there a man." The decision itself would seem to suggest that even in the new world the recent changes in the criminal procedure in Scotland would appear revolutionary. But the most interesting suggestions of all are those conveyed in the last two sentences of the report: "As the indictment stands, all the allegations might be true, and the respondent not guilty. The illicit intention might have been to steal, burn or murder, as well as to have unlawful sexual connection." Now going to bed with one's neighbor's wife has always been deemed of itself to infer a henious offense, but hitherto one had no idea of the vast possibilities of crime which such conduct opened up. We presume from the context that stealing, burning and murdering are cited merely as examples *ex grege*, and that the illicit intention inferred by this conduct might have been any offense known to the criminal law. In this view a charge taking the form of our old indictments might run somewhat as follows: "Whereas by the laws of this and every well-governed realm an attempt to commit willful fire-raising is a henious crime, and severely punishable, yet true it is and of verity, that you the said John Smith are guilty of the said crime, actor or art or part, in so far as on or about the 10th day of August last, in the house number 247 High Street, at present occupied by William Brown, tailor, you the said John Smith did go to bed with Jessie Spence or Brown, wife of the said William Brown, and this you did with the intention of committing willful fire-raising." There is here a valuable suggestion for the defense in actions of divorce. Hitherto it has been deemed sufficient to prove that A slept with B's wife, and there remained no other possible defenses save lenocinium and condonation. But all this will be changed if we adopt the American suggestion. It will be prudent however for the defender to choose some comparatively venal offense as a cloak for the conjugal misconduct. Thus in answer to an article in the condescendence for the pursuer libelling an act of adultery, we might have: "Answer for the co-defender—Admitted that the co-defender slept with the defender or the occasion libelled. *Quoad ultra* denied. Explained that co-defender went to bed with the defender with the intention of night poaching."]—*Journal of Jurisprudence and Scottish Law Magazine.*

Two Good Stories of Congressman Pettigrew.

I heard two good stories to-day of Pettigrew, of South Carolina, the great lawyer and Unionist, which I had never heard before. He was practicing at one time before a judge who was a Presbyterian of the straightest sect and a very hard working officer. It came to be Maundy Thursday, and Pettigrew and the Episcopalians and Roman Catholics thought they would like an adjournment of Court over Good Friday. Pettigrew was selected to make the motion. "Your honor," he said, I desire to move that the Court adjourn over to-morrow." "Why should the Court adjourn over to-morrow, when the docket is so crowded?" asked the judge. "Because, said Pettigrew, "to-morrow is Good Friday, and some of us would like to go to church." "No," said the judge decidedly, after a moment's thought, "the Court will sit to-morrow as usual." "Very well, your honor," replied Pettigrew, adding, as he turned away, "I know there is a precedent, for Pontius Pilate held Court on the first Good Friday."

The same judge was a great stickler for etiquette, and when, one hot July day, Pettigrew came into the court room in a black coat and yellow nankeen trousers the judge took him sternly to task, asking him whether he did not know that the rules of that Court required its counsellors to appear in "black coat and trousers." "Well, your honor," said Pettigrew, innocently, "I submit that I am within the rule, for I have on a black coat and trousers." But they're not black trousers," insisted the judge, "black coat and trousers mean that both shall be black." "Then," said Pettigrew, "I call your honor's attention to the fact that the sheriff of this Court is in contempt of its rule, for they require him to attend upon its sessions in a cocked hat and sword, and while his hat seems to be cocked his sword certainly is not." The judge said no more about the trousers.—*Philadelphia Record.*

Where attorney for plaintiff received from defendant, payment of judgment, there is no privity between him and defendant to support *assumpsit* for money so paid. Green *vs.* Brengle, Sup. Ct. App. Va., May 10, 1888.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **James C. McGuire**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 5th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 5th day of September, 1888.

FREDRICK B. McGUIRE,
JOSEPH D. McGUIRE,
Executors.

38 No. 3204. Ad. D. 14. Geo. E. Hamilton, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Elizabeth MacLeod**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 14th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 14th day of September, 1888.

NORMAN S. BESTOR,
ORSON H. BESTOR,
Executors.

38 No. 3187. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 14th, 1888.

In the matter of the Estate of **Henry E. Scott**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Albert F. Fox and Noble D. Larner, Executors, by the will appointed.

All persons interested are hereby notified to appear in this Court on Friday, the 12th day of October next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and *Evening Star* previous to the said day.

By the Court. W. S. COX, Justice, &c.
38 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 17th, 1888.

In the case of James M. Green, Administrator of **James Ward**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 12th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
38 No. 2836. Ad. D. 13. E. S. McCalmont, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 14th day of September, 1888.

Elizabeth Latham vs. **James Latham.** } No. 11282. Eq. Docket 28.

On motion of the plaintiff, by Mr. Lemuel Fugitt, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for an absolute divorce on the ground of desertion.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER and *The Weekly Star* newspaper, printed in Washington.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
38 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Eliza A. Offutt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 12th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 12th day of September, 1888.

R. P. JACKSON, Ex'r, 3250 M st. n. w.
38 No. 3167. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 17th day of September, 1888.

Christopher C. McKenney et al. vs. **Robert V. McKenney et al.** } No. 11224. Eq. Docket 28.

On motion of the plaintiffs, by Messrs. E. A. Newman and J. J. Johnson, their solicitors, it is ordered that the defendants, **Frederick E. Albright, Robert F. Bopp, Laura Bopp and George E. Bopp**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for partition or sale of parts of certain lots and premises in squares 978 and 1001, in the City of Washington and District of Columbia, and distribution.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
38 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

September 18th, 1888.

In the matter of the Estate of **James M. Reynolds**, late of Adams Co., Miss., deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by John R. Reynolds, of Dayton, Ohio.

All persons interested are hereby notified to appear in this Court on Friday, the 5th day of October next, at 11 o'clock a. m., to show cause why Letters of Administration on the Estate of the said deceased, should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
38 Test: DORSEY CLAGETT, Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

September 13, A. D. 1888.

Louise F. Sauter vs. **William W. Sauter.** } No. 11277. Equity.

On motion of the plaintiff, by Mr. Oscar Nauck, her solicitor, it is ordered that the defendant, **William W. Sauter**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published once a week for three successive weeks before said day.

The object of this suit is for a divorce because of desertion and abandonment and non-support.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
38 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Special Term for Orphans' Court Business.

In the matter of the Guardianship of **Horton C., Gertrude A. and Robert H. Ryan**, infants. } No. 182. Guardianships.

Job Barnard, the guardian of said infants, having reported a sale of lot 31 of R. H. Ryan's subdivision of original lot 19, in square 693, in Washington City, for $5,200.

It is, this 17th day of September, 1888, ordered that the said sale be finally ratified and confirmed on Friday, the 5th day of October, 1888, unless cause to the contrary be shown before that day.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for two weeks prior thereto.

W. S. COX, J.
A true copy. Test: DORSEY CLAGETT,
38 Register of Wills D. C.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of September, 1888.

Mary M. A. Gibson
vs.
Horatio G. Schissler. } No. 11240. Docket 28.

On motion of the plaintiff, by Mr. F. P. B. Sands, her solicitor, it is ordered that the defendant, **Horatio G. Schissler**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to secure perfect title to lot 5 in Wm. M. and W. W. Corcoran's subdivision of parts of tract now called Washington Heights, in the District aforesaid.

Provided a copy of this order be published once a week for three consecutive weeks prior to said rule-day in the WASHINGTON LAW REPORTER and the *Daily Critic*.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
37 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 12th day of September, 1888.

William Bresnahan
vs.
Margaret O'Connell et al. } No. 11263. Docket.

On motion of the plaintiff, by Messrs. Edwards & Barnard, his solicitors, it is ordered that the defendants, **Sarah McHenry** and **John Small**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to perfect the title to part of lots numbered 11 and 12, in square numbered 559, in Washington City, D. C., and to sell the same for the purpose of partition. By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
37 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 15th day of September, 1888.

Alice Clementine Hall,
Petitioner.
vs.
James Richard Hall,
Respondent. } No. 11244. Eq. Docket 28.

On motion of the petitioner, by Edwards & Barnard, her solicitors, it is ordered that the defendant, **James Richard Hall**, cause his appearance to be entered herein on or before the first rule-day occurring forty pays after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bond of marriage between the above named parties, on the grounds of the willful desertion and abandonment of the said petitioner by the respondent for the full and uninterrupted period or space of two years, and for adultery committed by the respondent during his marriage with the petitioner.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
38 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Jeremiah D. Dinneen**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of September, 1888.
KATE A. DINNEEN, Ex'x, 719 21st st. n. w.
39 No. 3208. Ad. D. 14. Dan'l E. Cahill, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel E. Somes**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 18th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 18th day of September, 1888.
F. C. SOMES, Adm'r, 514 F st. n. w.
9 No. 3088. Ad. D. 14.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Almira W. Powell**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of September, 1888.
GEO. W. BROWN, Ex'r, 1437 Pa. ave.
39 No. 3159. Ad. D. 14. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

September 21st, 1888.

In the case of Thomas Wilson, Administrator c. t. a. of **Charles Rau**, deceased, the Administrator c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 19th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
39 No. 2800.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 21st day of September, 1888.

Julia Ann Powell
vs.
William Powell. } No. 11246. Eq. Docket 28.

On motion of the complainant, by Mr. R. S. Smith, her solicitor, it is ordered that the defendant, **William Powell**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to dissolve the marital relations existing between the parties hereto, and further, that the said plaintiff's children may be declared legitimate under the statute in such case made and provided. The grounds for said dissolution of the bond of matrimony are bigamy, cruelty, adultery and desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
39 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

On the 22d day of September, 1888.

William C. Cox
vs.
Elizabeth R. Cox. } No. 11254. Eq. Docket 28.

On motion of the plaintiff, by Mr. Dan A. Grosvenor, his solicitor, it is ordered that the defendant, **Mrs. Elizabeth R. Cox**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the case will be proceeded with as in case of default.

The object of this suit is that the complainant, Wm. C. Cox, be granted a divorce *a vinculo matrimonii* from said defendant.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
39 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Townsend Turner**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1888.
J. C. ERGOOD, Adm'r, 1r315 11th st. n. w.
Store: Louisana ave. n. w.
39 No. 3216. Ad. D. 14. Wm. B. Lord, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
September 21st, 1888

In the case of Edward M. Mix, Administrator of Alice W. Mix, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 19th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

39 No. 2842. Ad. D. 13. Edwards & Barnard, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 21st day of September, 1888.

Eustace E. O'Brien vs. Lucy M. O'Brien. } No. 11290. In Eq. Docket 28.

On motion of the plaintiff, by Mr. J. G. Bigelow, his solicitor, it is ordered that the defendant, Lucy M. O'Brien, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bond of marriage with the defendant on the ground of willful desertion for the uninterrupted period of more than two years prior to the time of filing the bill of complaint herein.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

39 By H. W. HODGES, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration c. t. a. on the personal estate of Robert C. Hewett, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 21st day of September, 1888.

RACHEL M. HEWETT,
WALTER F. HEWETT,
EDWIN B. HAY,
Administrators c. t. a.

39 No. 3210. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 25th day of September, 1888

Annalanah Boice vs. Jno. W. Boice. } No. 11299. Eq. Docket 28.

On motion of the plaintiff, by Mr. E. B. Hay, her solicitor, it is ordered that the defendant, Jno. W. Boice, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce; cause, desertion.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

39 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Edwin P. Howland, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of September, 1888.

VIRGINIA F. HOWLAND, Adm'x, 211 4½ st. n. w.

39 H. B. Moulton, Proctor.

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Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

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Laws 1859-60.
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U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
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VOL. XVI. - - - - - - - No. 41
WASHINGTON, D. C. - - - OCTOBER 10, 1888

English Law Reforms and Elective Judges.

From the *New Jersey Law Journal* we take the following: When the English set about reforming ancient anomalies they make short work of it, and the fact that a thing has existed for several centuries is no objection to their legal system. It is true they are not embarrassed with a written constitution, and they can do in a few hours in parliament what we can only do after two years' delay and through two legislatures and a vote of the people. It may be better on the whole that we must go slowly than that the legislature should have power to change the judicial system in a day, but the fact that we must go slowly is no reason why we should not begin. * * * The particular reform lately accomplished in England, which suggested these remarks, was not an important one, but it is remarkable on account of the antiquity of the institution, which was abolished in an hour, and it is interesting because it shows the strong feeling in England in favor of an appointive judiciary rather than a judiciary elected by a common council or corporation. An election of judges by the people is unheard of there. The Common Sergeant and the Recorder of the City of London have been elected by the corporation for several centuries past.

It has now been abolished after a debate in the House of Commons of less than an hour. On July 13 a motion was made during the discussion of the London clauses of the local government bill, that "from and after the appointed day the rights claimed by the Court of Aldermen and the Court of Common Council to appoint to the offices of Recorder, Common Sergeant and Judge of the City of London shall cease, and that in any future vacancy the Crown shall appoint a duly qualified barrister." The proposal was energetically supported from both sides of the Houses, and the Ministry only objected that it was not within the scope of the bill, but after a short discussion they yielded and the motion was adopted. The *Daily Telegraph*, speaking of this sudden end of a privilege coeval with the charter of London, said on July 14:

"So long a life thus brought to an end, which is in such startling contrast with the dignity of its beginning, may well stir an emotion of pity even in the breast of the sternest municipal reformer. Any man, indeed, must be utterly dead to the softening influences of hoar antiquity who can view it absolutely unmoved. At the same time, and while condoling with the City Fathers on the extinction of this ancient franchise of theirs, we must candidly admit that there was nothing venerable about it but its age. For many generations past the power of electing judges has been not only an anachronism but an anomaly of the most questionable order in English institutions. That there was a time when it wes otherwise it would be unfair and unhistorical to deny. In the days when no judge was independent, in our modern sense of the word, the now abolished franchise and others of like character occupied an exactly opposite position to that which they now hold. Instead of being a defect in a good system of judicature, it was a corrective of a bad one. So long as judges appointed by the Crown were removable at the royal pleasure it was a positive advantage that there should be some judicial officers who neither owed their appointment to the Sovereign nor had to fear displacement by a mere act of his will. But ever since the judges of the Superior Courts ceased to hold their offices 'during pleasure,' and acquired their present right to hold them 'during good behavior' the municipally elected judge lost his sole reason of existence. No longer superior to them in security of tenure, his inferiority to them in respect of his mode of appointment become more and more conspicuous. He was the sole representative of a vicious system of judicial nomination, which no country in either hemisphere has ever adopted without repenting it. An elective judiciary stands condemned not only, as lawyers say, by the 'reason of the thing,' but by actual experience of its working. So repugnant has the idea become to English sentiment that there is felt to be something almost startling in the question which Sir Henry James aptly addressed to the Government last night. What, he asked, would be said 'if they applied the principle which prevailed in the city to an election of judges of the Superior Courts?' The notion is so impossible to realize that we despair of guessing 'what would be said' in such circumstances. It is certain, however, that indignation would be a word inadequate to express the national sentiment. Nothing has more tended to insure that high respect in which the English judges are held for impartiality and independence than the fact that they have never needed to court popular suffrage, or even to pay the slightest heed to the favor of any man or body of men among their fellow citizens. And seeing that the reputation of our judges, as evidenced in the absolute confidence which is reposed in them by the people, is one of our most precious possessions, we certainly ought to take every opportunity of assimilating the tenure of all judicial offices in the country to that of the judges of the high court."

1. THE demand by an insurance company from the insured of two assessments after the company had received information of the falsity of representations made by the insured in the application, operates as a waiver of all objection on that ground.

2. Where important information is given by an inquirer to a clerk of an insurance company, to whom the inquirer was referred by the secretary of the company, such information so given operates as notice to the company. Fitzgerald *vs.* Hartford etc. Co., Supreme Court of Connecticut, January Term, 1888.

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SUPREME COURT OF PENNSYLVANIA.

THE ROYAL INSURANCE CO. *vs.* BEATTY.

Silence, in certain cases, gives assent, and thus creates a contract. This, however, is true only where some assertion is made by the other party to which no answer is given, under circumstances which would properly warrant the inference that compliance was intended.

But when a question is asked, the fact that no reply is made has no such effect. It is evidence either that the question was not heard or that the person addressed did not intend to comply with the request. Especially is this the case when, if a compliance was intended, the request would have been followed by an actual doing of the thing requested.

One who asks another to enter into a certain contract and receives no answer should repeat his question till he obtains one or becomes satisfied that he cannot do so. He has no right to assume that silence means that the request is granted, for it not only does not, under such circumstances (supposing the question is heard), mean assent, but is very strong proof of dissent.

In such a case there is nothing to go to the jury.

Error to the Court of Common Pleas No. 2, of Philadelphia County.

Opinion by GREEN, J.

We find ourselves unable to discover any evidence of a contractual relation between the parties to this litigation. The contract alleged to exist was not founded upon any writing, nor upon any words, nor upon any act done by the defendant. It was founded alone upon silence. While it must be conceded that circumstances may exist which will impose a contractual obligation by mere silence, yet it must be admitted that such circumstances are exceptional in their character, and of extremely rare occurrence. We have not been furnished with a perfect instance of the kind by the counsel on either side of the present case. Those cited for defendant in error had some other element in them than mere silence, which contributed to the establishment of the relation. But in any point of view it is difficult to understand how a legal liability can arise out of mere silence of the party sought to be affected, unless he was subject to a duty of speech, which was neglected to the harm of the other party. If there was no duty of speech, there could be no harmful omission arising from mere silence. Take the present case as an illustration. The alleged contract was a contract of fire insurance. The plaintiff held two policies against the defendant, but they had expired before the loss occurred and had not been formally renewed. At the time of the fire the plaintiff held no policy against the defendant; but he claims that the defendant agreed to continue the operation of the expired policies by what he calls "binding" them. How does he prove this? He calls a clerk, who took the two policies in question, along with other policies of another person, to the agent of the defendant to have them renewed, and this is the account he gives of what took place: "The Royal Company had some policies to be renewed and I went in and bound them. Q. State what was said and done? A. I went into the office of the Royal Company and asked them to bind the two policies of Mr. Beatty expiring to-morrow. The Court. Who were the policies for? A. For Mr. Beatty. The Court: That is your name, is it not? A. Yes, sir. These were the policies in question. I bound the policies of Mr. Priestly up to the first of April. There was nothing more said about the Beatty policies at that time. The Court: What did they say? A. They did not say anything, but I supposed that they went to their books to do it. They commenced to talk about the night privilege and that was the only subject discussed. In his further examination he was asked: Q. Did you say anything about those policies (Robert Beatty's) at that time? A. No, sir; I only spoke of the two policies for William Beatty. Q. What did you say about them? A. I went in and said: 'Mr. Skinner, will you renew the Beatty policies, and the night privilege for Mr. Priestly?' And that ended it. Q. Were the other companies bound in the same way? A. Yes, sir; and I asked the Royal Company to bind Mr. Beatty." The foregoing is the whole of the testimony for the plaintiff as to what was actully said at the time when it is alleged the policies were bound. It will be perceived that all that the witness says is that he *asked* the defendant's agent to *bind* the two policies, as he states at first, or to *renew* them, as he says last. He received no answer; nothing was said, nor was anything done. How is it possible to make a contract out of this? It is not as if one declares or states a fact in the presence of another and the other is silent. If the declaration imposed a duty of speech on peril of an inference from silence, the fact of silence might justify the inference of an admission of the truth of the declared fact. It would then be only a question of hearing which would be chiefly, if not entirely, for the jury. But here the utterance was a question and not an assertion, and there was no answer to the question. Instead of silence being evidence of an agreement to do the thing requested, it is evidence, either that the question was not heard, or that it was not intended to comply with the request. Especially is this the case when, if a compliance was intended, the request would have been followed by an actual doing of the thing requested. But this was not done; how, then, can it be said it was agreed to be done? There is literally nothing upon which to base the inference of an agreement upon such a state of facts. Hence, the matter is for the Court and not for the jury, for if there may not be an inference of the controverted fact the jury must not be permitted to make it.

What has thus far been said relates only to the effect of the non-action of the defendant, either in responding or doing the thing requested. There remains for consideration the effect of the plaintiff's non-action. When he asked the question whether defendant would bind or renew the policies and obtained no answer, what was his duty? Undoubtedly to repeat his question until he obtained an answer; for his request was, that the defendant should make a contract with him, and the defendant says nothing. Certainly such silence is not an assent in any sense. There should be something done or else something said before it is possible to assume that a contract was established. There being nothing done and nothing said, there is no footing upon which an inference of agreement can stand. But what was the position of the plaintiff? He had asked the de-

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fendant to make a contract with him, and the defendant had not agreed to do so; he had not even answered the question whether he would do so. The plaintiff knew he had obtained no answer, but he does not repeat the question; he, too, is silent thereafter, and he does not get the thing done which he asks to be done. Assuredly it was his duty to speak again, and to take further action if he really intended to obtain the defendant's assent, for what he wanted was something affirmative and positive, and without it he has no status. But he desists, and does and says nothing further. And so it is that the whole of the plaintiff's case is an unanswered request to the defendant to make a contract with the plaintiff, and no further attempt by the plaintiff to obtain an answer, and no actual contract made. Out of such facts it is not possible to make a legal inference of a contract. The other facts proved and offered to be proved, but rejected improperly, as we think, and supposed by each to be consistent with his theory, tend much more strongly in favor of the defendant's theory than of the plaintiff's. It is not necessary to discuss them, since the other views we have expressed are fatal to the plaintiff's claim.

Nor do I concede that if defendant heard plaintiff's request and made no answer an inference of assent should be made; for the hearing of a request and not answering it as consistent, indeed more consistent, with a dissent than an assent. If one is asked for alms on the street and hears the request but makes no answer, it certainly cannot be inferred that he intends to give them. In the present case there is no evidence that defendant heard the plaintiff's request, and without hearing there was, of course, no duty of speech.

Judgment reversed.

A remarkable point with reference to unclaimed dividends arose lately in the Manchester Court of Bankruptcy in the matter of a former director of the Guardian Building Society. In consequence of the failure of this society, and the heavy liabilities which the director had incurred, he was compelled in 1881 to file his petition. The creditors passed a resolution accepting a cash composition, and upon this being confirmed the money was paid over to the trustee, and he subsequently sent notice to each creditor to claim the amount due to him. Several of the creditors, however, never applied for payment, and in consequence a portion of the money was still in the hands of the trustee. The Guardian Society had been wound up, and its final dividend paid; the Statute of Limitations, too, had come into operation, and now the trustee knew not what to do with the money, nor of any Act of Parliament which would assist him in the case. The bankrupt, under the circumstances, considered he had a claim on the money as unclaimed composition. It was finally decided that notice should be given by the trustee to each creditor who had not proved his claim, and that should no proof be sent in within a fortnight the money was to be paid over to the debtor, who, however, must give an undertaking to pay the composition to any creditor subsequently applying for it.—*London Law Journal.*

Henry George and New Jersey Public Policy.

In Hutchins *vs.* George (N. J.), 14 Alt. Rep. 108; 12 Cent. Rep., 251, the Court of Chancery of New Jersey have come in contact with the writings of Mr. George in such a way as to compel the Court to say whether or not the distribution of those writings could be regarded as a charity. The executor of a will asked the Court for a construction of it. The will contained the following clause:

"*Lastly*, all the rest and residue of my estate, of any and every form, kind and description whatsoever, I hereby give, devise and bequeath, under the name of the 'Hutchins Fund' to Henry George, the well known author of 'Progress and Poverty,' his heirs, executors and administrators, in sacred trust for the express purpose of 'spreading the light' on social and political liberty and justice in these United States of America by means of the gratuitous, wise, efficient and economically conducted distribution all over the land of said George's publication on the all-important land question and cognate subjects, including his 'Progress and Poverty,' his 'Problems of the Times,' and any other of his books and pamphlets which he may think it wise and proper to gratuitously distribute in this country."

There were certain other provisions which need not be considered. Following the example of Lord Eldon in a suit which touched the piracy of the copyright of Byron's "Cain," the Court took time to read some portions of the works of Mr. George which had been offered in evidence, and found therefrom that he characterizes the existing system of land tenure as "robbery;" from which the Court concluded that the diffusion of such sentiments was not a "charity," a bequest for which the courts would enforce. They therefore held that the testator died intestate as to so much of his estate as he had attempted to dispose of by this paragraph of his will. In giving the opinion of Court, Vice-Chancellor Bird, among other things, said:

"The exception to which I have adverted has reference to what Mr. George says with respect to the claim of land-owners to compensation. He says: 'It is not merely a robbery in the past, it is a robbery in the present—a robbery that deprives of their birthright the infants that are coming into the world. Why should we hesitate about making short work of such a system? Because I was robbed yesterday, and the day before, and the day before that, is it any reason that I should suffer myself to be robbed to-day and to-morrow? Any reason that I should conclude that a robber has acquired a vested right to rob me?' Again, he says: 'Historically, as ethically, private property in land is robbery.' Clearly, the author, in these passages, not only condemns existing laws, but denounces the fact that the title to land in private individuals is secure, as robbery, as a crime. It is this aspect of the case which leads me to the conclusion that the Court ought to refuse its aid in enforcing the provisions of this will. Whatever might be the rights of the individual author in the discussion of such questions in the abstract, it certainly would not become the Court to aid in the distribution of literature

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which denounces as robbery, as a crime, an immense proportion of the judicial determinations of the higher courts. This would not be charitable. Society has constituted courts for the purpose of assisting in the administration of the law, and in the preservation of the rights of citizens, and of the public welfare; but I can conceive of nothing more antagonistic to such purpose than for the courts to encourage, by their decrees, the dissemination of doctrines which may educate the people to the belief that the great body of laws which such courts administer concerning titles to land have no other principle for their basis than robbery. I have sought to overcome the view just expressed by striving to bring the books of Mr. George within that branch of the opinion in Jackson *vs.* Phillips, *supra*, which maintained that efforts to produce a change in public opinion on the subject of slavery by the publication of books, newspapers, speeches and lectures was charitable; but I have not been able so to do for the reason given. However radical the works of Mr. George may be, however much in conflict with prevailing convictions or prejudices, I can find but the one thing in them that in any sense makes it my duty to say that the Court cannot regard the bequest as charitable. If I am correct in the foregoing view, the testator died intestate as to all of his estate not disposed of by the three first paragraphs of his will. I will advise a decree in accordance with these views."

Lord Eldon himself could not have rendered a narrower decision. In fact, the decision is unworthy of an enlightened modern tribnnal. Charities are upheld for grossly superstitious purposes. The widest latitude is allowed in support of the right of a man to dispose of his property by will, in determining what is and what is not a charity. Certainly it would not be unlawful for a man to expend his money in distributing the writings of Mr. George in his life-time. There is no law, common or statute, which condemns the distribution of writings of that sort. They do not attack the existing system of public or private morals. They do not attack any religious faith. They are simply the arguments of a theorist upon political questions. The fact that a man condemns an existing law as robbery is no reason whatever for saying that the distribution of a book making such a denunciation is not a charity. There are many existing laws as to which half of the country are ready to say that they do not stand on a higher plane than robbery. It may be that Vice-Chancellor Bird himself would say this in regard of some of our customs laws. Does it therefore follow that a judge who entertains a different opinion is empowered to say that the distribution of a book advocating the repeal of such laws may not be regarded as a charity, in a country where the widest freedom of opinion and discussion is not only tolerated, but encouraged? In fact, there are but two or three States in the Union which could well produce a decision so narrow, and New Jersey is one of them.—*A. Law Review.*

CONSIGNEE of goods shipped through common carrier, and not consignor, will be considered the owner thereof, in absence of proof to contrary. Benjamin *vs.* Levy, Sup. Ct. Minn.

MARYLAND COURT OF APPEALS.

SCARBOROUGH *vs.* SCOTTEN.

At the suit of an owner of promissory notes a court of equity has jurisdiction to compel their delivery to him by the defendant, to whom they had been given for collection and who had failed to collect them. An action at law for the value of the notes would not furnish an adequate remedy.

IRVING, J.—This appeal is from a decree of the Circuit Court of Cecil County, sustaining a demurrer to the appellant's bill in equity and dismissing the same.

The appellant's bill charges that, in the year 1880, being the owner of certain promissory notes and single bills, and desiring to have the same collected, he indorsed and delivered the same to William Scotten, the defendants' testator, with the understanding and agreement that he (William Scotten) would collect the same from the persons owing the promissory notes and single bills, and would pay over the amount so collected to Francina Scarborough, the wife of the appellant; that said agreement was made with the defendants' testator, verbally, at the time the promissory notes and bills were indorsed to him. The bill then avers that, after such indorsement and delivery, William Scotten died without having collected any of the notes and bills so indorsed to him, leaving a will by which the defendants were appointed executors, and who have duly qualified as such; that they have as executors those promissory notes and single bills now in their possession; that Francina Scarborough, appellant's wife, to whom the proceeds were to be paid when collected has assigned to the complainant all her interest in the same and their proceeds; that the defendants have not collected the same nor made any effort to collect the same, and that their inaction is for the purpose of delaying and hindering the complainant in the collection of and receipt of the money due him thereon; and the complainant has demanded of the executors the delivery of the notes and single bills to him, but the defendants have refused and still refuse to surrender the same. The bill then charges that the complainant is without adequate remedy at law and prays for a decree requiring the surrender of the promissory notes and single bills, copies of which are filed with the bill, and for such other relief as his case may require.

By the demurrer, of course, all the facts alleged are admitted, and the only question for us to decide is whether the bill makes a case for equitable interference.

In sustaining the demurrer and dismissing the bill the learned judge of the Circuit Court simply says: "I am of the opinion that the bill presents a case where the plaintiff has a certain, adequate and complete remedy at law." Buzzard *vs.* Houston, 119 U. S., 347; Winner *vs.* Penniman, 35 Md., 163. In this view we do not concur.

Judge Story, in his Equity Jurisprudence, vol. 2, sec. 703, 7th ed., says that a court of equity will render remedial justice by decreeing the delivery up of deeds and other instruments of writing to those who are entitled to them. That learned author says it is a very ancient "head of equity jurisdiction." In the same section

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last cited he says: "The same doctrine applies to other instruments and securities, such as bonds, negotiable instruments and other evidences of property, which are improperly withheld from persons who have an equitable or legal interest in them, or who have a right to have them preserved. * * * It is true that an action of detinue or even of replevin might, in some few cases, lie and give the proper remedy if the thing could be found. But generally in actions at law damages only are recoverable; and such a remedy must, in many cases, be wholly inadequate."

Lord Hardwicke, in Jackson *vs.* Butler, 2 Atk., 306, decreed the surrender of a mortgage by a pawnee of it, who had received it from a person who had received it from the owner for the purpose of collecting the interest due on it, and had violated his duty and pawned it. In many other cases the principle has been applied. Duke of Somerset *vs.* Cookson, 11 Lead. Cas. Eq. (White & Tudor), 1110-1117; Fells *vs.* Reid, 3 Ves., 70; Nutbrown *vs.* Thornton, 10 Ves., 163.

There can be no doubt that the true ground of interference by a court of equity is the inadequacy of any legal remedy to give full relief. That is the test. In this case the Court below thought the remedy at law was full and adequate; and the Court relies on Penniman's Case, 35 Md., 163, and Buzzard *vs.* Houston, 119 U. S., 347.

In the first mentioned case this Court decided that trover would lie in favor of one joint owner of a note against another joint owner who surrendered it to the maker for cancellation. The plaintiff saw fit to rely on the action of trover against his co-owner, and was awarded damages, which were easily and fully measurable.

In Houston's Case the Supreme Court merely decided that if the paper sought to be restored was restored the damages recoverable for its breach would be the same as in an action for deceit because of the fraudulent procurement of its surrender. Full relief in those cases would be secured by law. In this case, however, it would not seem that trover or replevin would secure full and adequate relief. Replevin would secure the surrender of the notes if the defendant saw fit to exhibit them to the officer and allowed him to take them; but the officer could not search his person or the places where the defendant kept his money and securities. From the very nature of the things sought to be recovered they could not be obtained by the officer against the will of the defendant; and having refused to deliver them upon demand, as the demurrer admits the defendants have done, and for the reason assigned, it is plain the action of replevin would be nugatory for the recovery of the specific things sought; and if after the return of "eloigned" the suit should proceed as an action for damages the measure of damages would be the same as in trover—the value of the property taken and detained. In trover the measure of damages is the actual value of the property taken, at the time of conversion. Hepburn *vs.* Sewell, 5 Harr. & J., 212; Herzberg *vs.* Adams, 39 Md., 309.

In the present case the ascertainment of the value of the notes would involve inquiry into the solvency of fifteen persons, for if the parties were insolvent the notes could not be worth what they promise to pay. The action of trover could, it may be conceded, be brought, but such action could not certainly give him adequate relief. In that action the measure of damages would be the actual value of the notes at the time of the taking of them by the defendants. Hepburn *vs.* Sewell, 5 Harr. & J., 212; Herzberg *vs.* Adams, 39Md., 309.

As we have said, the solvency of fifteen persons would be the subject of inquiry, for the defendants in that action could not be bound to pay for those notes more than they were worth; and where the judgment was obtained and paid, by the decision of this Court in Hepburn *vs.* Sewell, the defendants would become the purchasers of the notes and the plaintiff's right to them would cease. It might very well be that some or even all of the makers of the notes were insolvent when the conversion of the notes by the defendants took place; but it is not a fair or reasonable presumption that they would always remain so; and the plaintiff in this case ought not to be forced to part with the notes for what they were actually worth when taken from him, when the possibility of large recovery in future existed. He ought to have his notes and be allowed to bide his time for the collection thereof, as he might find practicable, if the makers should eventually become more prosperous and pecuniarily more responsible. It, at least, is but equitable to allow him his own judgment and discretion whether to have them now, and hold his judgment until there be opportunity to make it, or defer as he pleases; and it is inequitable to force him in effect to sell them for what an action in trover would give him for them. Besides, in an action at law against the defendants the questions arising upon the solvency of so many persons would involve tedious and protracted litigation, and question of evidence to which he ought not to be subjected. Such questions could not arise between this appellant and his debtors in a suit between them. A suit at law to give full measure of relief should not involve such delay and expense, nor the uncertainty of a jury's decision on the proof. A legal remedy imposing such a hardship cannot be full, complete and ample.

We think the bill, if its allegations be true, does disclose a case for equitable interference. There was error, therefore, in sustaining the demurrer and dismissing appellant's bill. The defendants ought to have been required to answer, and if the allegations of the bill are sustained by proof, the appellant should be accorded the relief he asks for. The decree must therefore be reversed, and the cause remanded to the end that the demurrer may be overruled and the case proceed regularly to decree as the proof may justify.

Reversed and remanded.—*Maryland Law Journal.*

Instruction that measure of damages would be value of property sold, not exceeding amount due upon mortgage, with interest, is correct, because the jury must have understood that the Court in speaking of the amount due meant the amount remaining unpaid. *Id.* Robinson *vs.* Haug (Mich).

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NEW YORK SUPREME COURT,

GENERAL TERM.

CITIZENS' BANK, OF DAVENPORT,
vs.
IMPORTERS' AND TRADERS' NATIONAL BANK.

Decided June, 1888.

1. In order to entitle a bank to justify its refusal to pay money, on the ground that it has already paid it, it is incumbent upon it to show that the person to whom payment was made was authorized to receive said payment.
2. In the present case special indorsements upon the checks had been fraudulently erased by the clerk of plaintiff, and the names of other payees fraudulently substituted, and payment made by the bank upon the strength of the fraudulent indorsement. *Held*, under these circumstances, that the claim that because the title to a check can be passed by delivery without indorsement, the mere possession is evidence of title, is not sufficient, and something else must be proved by the bank to justify the payment. The checks having been specially indorsed, the bank could only justify its payment by showing that the indorsees had transferred their title to the person to whom the bank paid the check.

APPEAL by the defendant from a judgment entered upon a verdict in favor of plaintiff.

VAN BRUNT, P. J.—Most of the questions which are presented upon this appeal were determined in favor of the plaintiff when this case came up on a previous appeal before this Court from a judgment entered in favor of the defendant upon a dismissal of the plaintiff's complaint, and it is not necessary here to reconsider the questions which were then settled in favor of the plaintiff. The report of the case is to be found in 44 Hun, 386. Upon that appeal it was determined that while a check drawn by a drawer against a bank account does not operate as assignment of so much of the account, it authorizes the payee, or one to whom he has indorsed and delivered it, to make a demand, and the refusal of the bank to pay on presentation gives the drawer a right of action in case he has funds in bank to meet the check, and the refusal was without his authority. This right of action exists entirely independent of what the relations are as between the drawer and payee of the check. It is not necessary, in order that this right of action shall arise, that the drawer shall take back the check from the payee's hands, because the action is not upon the checks, but upon the breach of the contract entered into between the depositor and the depository. Such being the case, the defendant became liable to the drawer, when presentation was made by the lawful holder of those checks and payment thereof refused for the amount of each check, and it is entirely immaterial, as far as this cause of action is concerned, as to whether the drawer has reimbursed the drawee or not. (Rector, &c., of Trinity *vs.* Higgins, 48 N. Y., 532.)

The only points which seem to be presented upon this appeal which differ from those which were considered when the case was before the Court, upon the previous appeal, are the fact that the defendant has paid the amount of these checks to the Fourth National Bank, who had possession of the same, and the exception raised by the refusal of proof as to the arrangements between the drawees of the checks and Mr. Bennett, who, it was claimed, had fraudulently forged indorsements upon the checks.

In order to entitle the defendant to justify his refusal, upon the plea of payment, it was incumbent upon it to show that the person to whom payment was made was authorized to receive payment, the more especially as in the case at bar there had been fraudulent alterations which absolutely vitiated, as far as the conveyance of any title to the check was concerned, the indorsement made by Wadsworth & Co., the payees of the checks.

Wadsworth & Co., as far as all except two of the checks were concerned, had made special indorsements of the checks. These indorsements had been erased fraudulently by their clerk and the names of other payees substituted, and it was through these indorsements thus fraudulently made that the checks passed into the possession of the Fourth National Bank.

Under these circumstances the claim that because the title to a check can be passed by delivery without indorsement, mere possession is evidence of title, can not prevail. Something else must be proved on the part of the defendants justifying the payment.

Wadsworth & Company having shown that these checks were specially indorsed, the defendant could justify their payment only by showing that the indorsees had transferred their title to somebody else. This the proof utterly fails to show. As to the checks which were indorsed by Bennett in the name of Wadsworth & Co., it is sufficient to say that these indorsements conveyed no title, because Bennett had no authority to make them. His authority was limited. It was to indorse checks for business purposes, and there is no claim that these checks were indorsed in Wadsworth & Co.'s business, or that any person who received any one of these checks after they had been indorsed by Wadsworth & Co. ever knew that Bennett had any authority whatever, under any circumstances, to make indorsements, and consequently could not have relied upon the same. They must, therefore, claim title upon showing strict right in Bennett to use the name of Wadsworth & Co. This they did not do. It was shown that these checks were not indorsed by Bennett for any business purposes of Wadsworth & Co., and consequently he had no power to make the indorsement by which he assumed to convey the title to those checks.

The condition of the accounts or the arrangements between Bennett and Wadsworth & Co., after the discovery of the forgeries which he had perpetrated upon them, was of no consequence to the defendant whatever. The plaintiff might enter into an investigation of those circumstances, perhaps, when Wadsworth & Co. made their claim for the amount of these checks, but the right of action of the plaintiff against the defendant arose at the moment that payment to the true holder was refused, and as to what subsequently became of these drafts the defendant had nothing whatever to do.

There is no question as to the good faith of the defendant in its refusal to pay the checks upon the second presentation. But the legal rights of the parties were thereby established. The checks were presented by the true owners thereof, they never having parted with their

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title to the persons through whom the Fourth National Bank derived possession. The defendant, having paid these checks to the Fourth National Bank, if that Bank had no title whatever to the possesssion thereof, has its remedy against the receiver of the money.

We are of opinion, therefore, that the judgment appealed from must be affirmed, with costs.

Recent English Cases.

The judgments of two cases recently reported are of unusual interest to the legal profession, more especially solicitors *qua* solicitors, and will repay careful perusal. Some interesting and useful remarks fell from Mr. Justice Stirling in the case of *Re* Blundell; Blundell *vs.* Blundell as to what was the position of a trustee or executor who has to employ a solicitor, an auctioneer; or a stockbroker. Here an executor and trustee employed a solicitor to assist him in winding up the testator's estate and in the execution of the trust. In the course of the employment the solicitor required the trustee to make a payment to him on account of his costs. The trustee did so, and to the knowledge of the solicitor, out of the trust property, and then claimed that the solicitor was not entitled to retain the sum so paid to him out of the trust estate, except on the terms that if the trustee should, after the account had been taken, turn out to be a defaulter, and be ordered to pay the balance into Court and failed to do so, the solicitor should be liable to have the same order made against him. But the Court considered that solicitors were agents whom the executor has power to employ, and cannot be treated as constructive trustees, and made parties to proceedings, unless they have improperly retained part of the trust estate, or assisted, with knowledge, in a dishonest act of the executor. With regard to the position of a trustee or executor as regards the agent employed by him, Mr. Justice Stirling said he enters unquestionably into a contract with reference to the employment of a solicitor, or auctioneer, or stockbroker in which he himself is personally liable, but by law he is entitled to be indemnified out of the trust estate. What is that right of indemnity? In equity it is not a right to be indemnified merely after he has made the necessary payments to the solicitor or other agent. In equity he is entitled to be indemnified, not merely against the payments actually made, but against his liability. For example, a trustee, in whose name shares are standing, is entitled to be indemnified by his *cestui que trust* against calls on those shares, and he is not bound before having recourse to that indemnity to pay the calls, but he is entitled to come to the Chancery Division and ask that he may receive from his *cestui que trust* personally the amount of the calls in order that he may pay them.

Another case is that of Doobey *vs.* Watson, recently reported, which was stated by Mr. Justice Kekewich to be a case of considerable importance to practising solicitors. The facts of the case were that the senior partner of a firm of solicitors invested moneys belonging to his client upon a mortgage security, which he recommended, and of which the client approved. Some years later the solicitor died, and seven years afterwards the client, owing to the security having proved insufficient, brought an action against the surviving partner and executor to make good the deficiency. The Court, however, held that no relation of trustee and *cestui que trust* had existed between the solicitor and client, and that the Statute of Limitations was a bar to any action for negligence. In his judgment Mr. Justice Kekewich pointed out that the words trustees and *cestui que trust* have a technical and defined meaning. First, you must have a person who is a trustee; then you must have property, which may be chattels, or land, or money, or anything else, but you must have property that is held in trust; and then you must have a person or persons who are the *cestuis que trust* in trust for whom that property is held by the person who is the trustee. That combination must exist before you get the relation of trustee and *cestui que trust*. He then proceeded to show what three positions a solicitor occupies with reference to money entrusted to him for investment. In the first, a solicitor receives a certain sum of money in order to invest it on a particular mortgage. His client, either on his own selection or on the advice of the solicitor, has determined to invest a particular sum on a particular mortgage, and all the solicitor does is the legal business and the receiving the money and seeing, when the proper time arrives, that the deeds are executed and the money handed over to the mortgagor. His duty in that case is simple but important, and large sums very often pass in that way. In the second case, the solicitor receives money in order that he may himself find mortgages to be approved of by the client. He retains the money in the meantime. He from time to time reports to his client what mortgages he has found. He does whatever business is necessary, he advises his client as to the precautions to be taken, and ultimately sees the money handed over, either as a whole or in parts, to the mortgagor. Beyond that there is a third case equally common, but distinct from the others, where the solicitor does far more than he does even in the second class—that is to say, where the client for some reason or another takes little part, perhaps no part at all, in the investment. He may be abroad, and the solicitor may be acting under a power of attorney; all the client requires is to know that the money has been invested, and that the interest will be payable and be paid. In that case the solicitor has an onerous duty to perform, because, beyond finding the mortgages, beyond doing the mere legal business, he really undertakes the responsibility to his client of seeing that they are good mortgages, on which the money may be safely invested. That is within the ordinary duty of solicitors according to the practice of the profession. This is an interesting and useful epitome of a solicitor's duties in mortgage matters.—*T. F. Uttley in the London Law Journal.*

A CONTRACT not to engage in the profession of medicine or surgery within certain limits is not void simply because the duration of the restraint is not limited. French *vs.* Parker, Sup. Ct. R. I., May 18, 1888.

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Contempt of Court.

The subject of contempt of court is likely to obtain some prominence by an extraordinary decision pronounced, on the 31st July, by Chief Justice Austin (formerly an advocate practicing in Montreal) while sitting in the General Court of the Bahama Islands. It appears that, on the 27th July, a prisoner named Thomas Taylor, after sentence was pronounced upon him for some offense, committed a serious assault upon the Chief Justice. Four days later, the Chief Justice pronounced the following sentence upon the prisoner for the contempt so committed:

"*In re* Reg. *vs.* Thomas Taylor for contempt of court.

"The writ of *habeas corpus* addressed to the keeper of the Nassau prison commanding him to produce before this Court or the Chief Justice or judge of this Court the body of Thomas Taylor, a prisoner in said Nassau prison, and in obedience to said writ the said keeper of said prison having produced the body of the said Thomas Taylor.

"And the said Thomas Taylor standing now before me in the Court.

"The Court, by the mouth of the said Chief Justice, makes and pronounces the following judgment and order:

"That you, the said Thomas Taylor, being then a prisoner under sentence in and before the said Court on the twenty-seventh day of July instant, presiding in said Court, the said Chief Justice, of the said General Court of the Bahama Islands (to wit, Her Majesty the Queen's Superior Court of Justice in and for our said Bahama Islands), while sitting on the bench holding said Court, in open Court did make a murderous assault by attacking the said Chief Justice on the bench and did beat and strike the said Chief Justice on his body with a weapon drawing blood, and did then and there strike other blows aimed at the head and body of the said Chief Justice, the same being and each of said acts and blows and strikings upon the said Chief Justice or aimed at him, being contempts and a contempt of Court, to wit, of the said General Court of the Bahama Islands and against Her Majesty the Queen's General Court of the said Bahama Islands, Her Majesty's Superior Court of Justice in our said Bahama Islands.

"It is hereby ordered and adjudged that for said contempts the said Thomas Taylor be whipped, and do receive on his back within the precincts of the prison walls of said Nassau prison, in the City of Nassau, on the thirty-first day of July instant, between the hours of four and five o'clock in the afternoon, thirty lashes.

"And it is hereby further ordered and adjudged that the said Thomas Taylor be held and kept in penal servitude hereafter for and during the term of his natural life."

We take the above from the *Montreal Legal News* of August 11. This is the most remarkable contempt case that ever came under our notice. A man sentenced for contempt of Court to receive "thirty lashes and to be held in penal servitude during the term of his natural life." This case shows beyond all question the wisdom of regulating the power of judges to punish for contempt of Court. Many of the States have so far changed the law as to require the finding of a jury before a person can be punished for contempt. When Judge Bradwell was in the Legislature he prepared a bill to regulate this power which received the favorable report of the judiciary committee of the House, although it was violently opposed by some of the best lawyers of that body, among whom were Mr. Connelly and Mr. Dunham. Mr. Justice Field is reported to have committed Judge Terry and his wife for a contempt committed in the presence of the Court and afterward, and while they were in jail, upon consultation with the circuit and district judges sentenced them to a term of imprisonment. If this is a correct report of the case, we think the learned judge committed an error. The prisoners ought to have had an opportunity to be present when the sentence was pronounced upon them. It is true that the punishment for the grave offense committed was light, but it would have been more in accordance with the usual mode of conducting judicial proceedings to have had the parties in Court to receive and hear their sentence.

There is something revolting to the American idea of justice to send a person to prison and then pass sentence upon him while he is locked up. If Mr. Justice Field was afraid of bodily harm he could have had the prisoners brought in irons before the bar of justice they had offended to receive its sentence.

It would have been more in accordance with the feelings of Mr. Chief Justice Austin to have sentenced Taylor to be hung for contempt of Court than to have sentenced him to receive thirty lashes and to be kept in penal servitude during his natural life.

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1. DECLARATIONS made by a vendor wholly separate and apart from the sale of goods made to a creditor in payment of a debt, are not competent evidence.

2. If a combination between vendor and vendee to defraud other creditors is first shown, or if the declarations are connected with the transaction in such a way as to be part of the *res gestæ*, such statements are admissible.

3. Declarations made to a creditor two weeks before the sale, as to the value of a stock of goods, and of which a subsequent purchaser had no notice, are not admissible to show fraud. Rogers *vs.* Thurston, Sup. Ct. of Neb., July 3, 1888.

LIBEL AND SLANDER—LIABILITY.—An action for slanderous words, spoken of and concerning the plaintiff, by a mutual aid association, of which he was a member when the alleged tort was committed, will not lie against the association sued as a partnership; but the redress, if any, is against the wrong-doers in their individual or non-partnership capacity. Nor does it make any difference in this respect that, in consequence of this, the slander, the plaintiff was suspended from the benefits of membership for a term of years, and that the action was brought pending this term of suspension. Gilbert *vs.* Crystal Fountain Lodge (Ga. S. C.), 4 Southeastern Reporter (March 6, 1888), p. 905.

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1. THE presumption is that an award is fair until the contrary is clearly shown; and where a lessee covenanted to make certain improvements and to pay taxes and rent, the amount of the latter to be fixed by arbitration at certain intervals, an award, fixing the amount at less than had been agreed upon and paid for a former term, although the value of the land had increased in the meantime, the taxes having also increased, does not show such unfairness, partiality or misconduct as to justify setting it aside.

2. Where two arbitrators choose a third by lot, under a submission giving them the right to choose a third arbitrator, and the parties with full knowledge thereof submit the matter in dispute to them, without objection, the award will not be set aside on account of such choice.

3. The mere expression of an opinion on a matter by one to whom it is long afterward submitted for arbitration will not disqualify him, where no bias or unfairness appears at the time of the submission or in the award. Brush *vs.* Fisher, Supreme Court of Michigan, June 8, 1888.

IT IS related by Gen. Styles, of Chicago, that a number of years ago he was prosecuting a minister, and that in handing his instructions to the Court he also inadvertently handed up the divisions of his argument to the jury, which were as follows:

1. Compliment the jury on its intelligence, etc.
2. Touch lightly on the evidence for the defense.
3. Discuss the evidence of the State at length.
4. Give the minister hell.

Payment of attorney's fee by transferee of a party in interest, to relieve the estate from lien thereof, is considered as compulsory and is recoverable from such party who had agreed to pay it. Dodge *vs.* Zimmer (N. Y.), 12 Cent. Rep., 752.

THE COURTS.

Supreme Court of the District of Columbia.

IN EQUITY.—New Suits.

October 1.

11373. Samuel J. Ritchie *vs.* Andrew Gleason et al. Injunction.

October 2.

11374. Michael L. Woods et al. *vs.* Perez Dickinson et al. To declare lien on draft and for injunction. Com. sols., Shellabarger & Wilson.

11375. Ambrose J. Faust, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., H. E. Davis.

11376. Edward L. Palmer et al. *vs.* Henry W. Hall et al. Creditor's bill, to sell part lot. Com. sols., Carlisle and McPherson.

October 4.

11377. Geneta L. Collins *vs.* Stephen R. Collins. For divorce. Com. sol., Jack Brown.

October 3.

11378. Maria L. Davison et al. *vs.* Ann Wollard. Com. sol., F. W. Jones.

October 5.

11379. Emory B. Williams, alleged lunatic. To determine alleged lunancy. Com. sol., H. E. Davis.

11380. Francis A. Petingale *vs.* Abraham F. Barker et al. Creditor's bill, to sell lot. Com. sol., J. J. Johnson.

11381. Edward W. Hawk *vs.* Sarah J. Hawk. For divorce. Com. sol., Chase Roys.

October 6.

11382. Maria E. Tallmadge *vs.* William W. Kirby et al. Injunction to remove cloud from title. Com. sols., Henkle & Duhamel.

11383. Amzi L. Barber *vs.* Thomas E. Waggaman et al. Injunction. Com. sol., A. S. Worthington.

11384. R. W. Clapp, use of Edward T. Walker, *vs.* The Automatic Water Gas Co. Injunction, receiver and account. Com. sol., H. B. Moulton.

11385. John T. Campbell et al. *vs.* Joseph M. Toner et al. Com. sol., D. O'C. Callaghan.

October 8.

11386. Lucretia S. Crawford, administratrix of Robert A. Crawford *vs.* Perez Dickinson et al. Com. sol., D. W. Glassie.

CIRCUIT COURT.—New Suits at Law.

October 2.

28978. The United States, ex rel. Mary E. Levey, intermarried with George C. Levey, *vs.* Strother N. Stocksiager, Commissioner of General Land Office. Mandamus. Pltfs attys, Smith, Britton, Brown & Johnston.

28979. Albert T. Johnson *vs.* The Republican National League. Account, $317. Pltfs attys, Garnett and Mackall.

28980. Mary Flynn *vs.* C. M. Limstrong et al. Judgment of Justice Strider, $35.45. Pltfs atty, Thomas J. Staley.

28981. Edward Lloyd et al. *vs.* Mercy M. Gray et al. Ejectment. Pltfs atty, F. H. Mackey.

28982. Duane C. Turner *vs.* Mary E. Riley. Pltfs atty, B. F. Leighton.

October 3.

28983. Leonidas H. Hall *vs.* Rachael E. Vass. Judgment of Justice Strider, $45. Pltfs atty, D. O'C. Callaghan.

28984. Joseph Loughran et al. *vs.* George Fox. Appeal. Deft atty, Same.

October 4.

28985. The Krebs Lithographing Co. *vs.* William S. Sammons, trading as Dixon Yeast Powder Co. Account, $200. Pltfs attys, Garnett and Mackall.

28986. W. R. Deeble *vs.* John J. Tuney. Judgment of Justice Helmick, $20.45.

October 5.

28987. Michael J. Colbert *vs.* Abraham Fisher. Note, $200. Pltfs atty, G. E. Hamilton.

28988. George A. Armes *vs.* Abial Fost. Appeal. Deft atty, M. J. Colbert.

28989. Isaac S. Lyon *vs.* John A. Wheatley et al. Notes, $450. Pltfs atty, T. J. Pickett.

October 6.

28990. John H. Smith *vs.* Richard Smith et al. Ejectment. Pltfs attys, Bradley and Arnold.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of October, 1888.

David Callahan, by his next friend, Margaret Callahan. vs. **Catharine Walsh alias Kate Walsh et al.**	No. 11248. Eq. Docket 28.

On motion of the plaintiff, by Messrs. Carusi & Miller, his solicitors, it is ordered that the defendants, **Catharine Walsh alias Kate Walsh and Mary Connery,** cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have certain real estate described in said cause which was conveyed by Mary E. Fitch to Bridget Callahan (wife of plaintiff), who departed this life on 27th August, 1888, declared to be held by the defendants to the use and benefit of plaintiff; and further, that defendants be decreed to convey said real estate to plaintiff, his heirs and assigns.

By the Court. CHARLES P. JAMES, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

41 By H. W. HODGES, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th of October, 1888.

Malachi Manahan vs. C. D. Fowler et al. } No. 11358. Eq. Docket 28.

On motion of the plaintiff, by Mr. Wm. Tayloe Snyder, his solicitor, it is ordered that the defendant, Michael Manahan, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain account, the entire personal estate in the hands of the defendant, Fowler, administrator, and to remove the cloud upon the title to part of lot twenty-two (22), in square two hundred and thirty-eight (238), in Washington City, in said District.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters of Administration c. t. a. on the personal estate of Henry Schmerz, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of September next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of September, 1888.

M. E. SCHMERZ, Adm'x c. t. a., 2811 M st. n. w.
40 No. 3202. Ad. D. 14. J. J. Waters, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 5th, 1888.

In the case of Martin F. Morris and Ben Hellen, Executors of Caroline C. Arthur, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
41 No. 2854. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of October, 1888.

Jeanette R. Lenman vs. Thomas U. Ward. } No. 11359. Eq. Docket 28.

On motion of the plaintiff, by Mr. Jennings, her solicitor, it is ordered that the defendant, Thomas U. Ward, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to construe decree in Equity Cause 5748, and to enjoin defendant from setting up title to pts. lots 7 and 8, square 399.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of October, 1888.

Thomas Gray and Son vs. Mary McMahon et al. } No. 11354 Eq. Docket 28.

On motion of the plaintiffs, by Mr. Woodbury Wheeler, their solicitor, it is ordered that the defendant, Joseph P. McMahon, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale of the real estate of the late Daniel McMahon, deceased.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 5th, 1888.

In the case of George J. Johnson, Administrator of John L. Gregory, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
41 No. 2702. Ad. D. 13. H. O. & R. Claughton, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of October, 1888.

Elizabeth Pierce, Edward Hayes and Ann Hayes. vs. John T. Vinson. } No. 28902. At Law.

On motion of the plaintiff, by Messrs. Worthington & Heald, their attorneys, it is ordered that the defendant, John T. Vinson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover possession of all of original lot three (3), and of lots eighteen (18), twenty (20), and twenty-one (21), of Wiegand's subdivision of certain lots in square five hundred and ninety-six (596), in the City of Washington, District of Columbia, in which lots 3, 18, 20 and 21, the plaintiffs claim an undivided one-fourth interest.

Also to recover one-fourth of the *mesne* profits of said lots 3, 18, 20 and 21 from September 1, 1885.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of October, 1888.

Americus L. Pogue et al. vs. John Woodnut Barcroft. } No. 11350. Equity Docket.

On motion of the plaintiffs, by Birney & Birney, their solicitors, it is ordered that the defendant, John Woodnut Barcroft, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided that a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three weeks before said day.

The object of this proceeding is to have a resulting trust, as to lots 24 and 25, square 117, in the City of Washington, decreed in favor of the complainants against said defendant, and to compel a conveyance thereof.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Michael V. Sheridan vs. Catherine M. Kennedy et al. } Eq. No. 11355.

Ordered this 8th day of October, A. D. 1888, that the defendants, Guy R. Kennedy, Joseph J. Kennedy, Cora W. Kennedy, Annie E. Bidwell and John Bidwell, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise this cause will be proceeded with against them as in case of default.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-named day.

CHARLES P. JAMES, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
41 By H. W. HODGES, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 3d day of October, 1888.

Bartow L. Walker et al. vs. Teenie Aleshire et al. } No. 11362. Eq. Docket 28.

On motion of the plaintiffs, by Mr. John Ridout, their solicitor, it is ordered that the defendants, Teenie Aleshire, Edward Aleshire, Georgie D. Blackaller, J. S. Blackaller, Kate W. Weller, A. N. Weller, Lillie B. Hascy, Harvey W. Hascy, Virgie Fullerton, Carrie A. Onderdonk, Alonzo M. Onderdonk, Harriet S. Onderdonk, Benjamin A. Onderdonk, Orra C. Onderdonk, William A. Onderdonk, Emily Onderdonk, Zillah W. Onderdonk, Katherine C. Onderdonk, Edward H. J. B. Moscrop, Edith V. Mann, Vernon Mann, S. V. Mann, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said date.

The object of this suit is to procure a sale for the purpose of partition of certain real estate in the City of Washington, District of Columbia, of which Henry Moscrop died seized.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
September 28, 1888.

In the case of George Emmert and Edward Castell, Executors of Jacob Frank, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 19th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
40* No. 2840. Ad. D. 13. Chas. F. Benjamin, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
Holding a Special Term for Orphans' Court Business.
September 28th, 1888.

In the case of Eugene Carusi, Administrator of Michael R. Combs, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 26th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
40 No. 2833. Ad. D. 13. Wm. Jno. Miller, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
October 1st, 1888.

In the case of Thomas E. Waggaman, Administrator of Lucy Byrne, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 26th day of October, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
40 No. 2662. Ad. D. 13. Irving Williamson, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 3d day of October, 1888.

John H. Sis, Plaintiff. vs. Emily A. Moxly et al., Defendants. } No. 11346. Eq. Docket 28.

On motion of the plaintiff, by Messrs. Carusi & Miller, his solicitors, it is ordered that the defendants, George C. Moxly, Lucy J. Moxly and William L. Crawford, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the appointment of a new trustee in place of Richard L. Crawford, deceased, mentioned in deeds of trust from said defendants, George C. Moxly and Lucy J. Moxly, to said Richard L. Crawford, to secure the payment of certain promissory notes to plaintiff; and the object of said suit is also to ascertain what real estate said defendant Emily A. Moxly and James Reily, executrix, and executor of Benjamin F. Moxly, deceased, and also said Emily A. Moxly, as surviving executrix and trustee of said Moxly, sold and conveyed, and in what manner the proceeds of sales have been invested, and also to ascertain whether or not said defendant, Emily A. Moxly, as executrix and trustee, under the will of said Benjamin F. Moxly, and decree of Court passed in Equity Cause of Emily A. Moxly against Mary T. Dent and others, had a right to sell the real estate of said Benjamin F. Moxly, deceased, or any part thereof.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 2d day of October, 1888.

Jacob Tome vs. John L. Bartlett et al. } No. 11331. Docket 28.

On motion of the plaintiff, by Mr. Kimball, his solicitor, it is ordered that the defendant, Israel G. Kimball, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct an error in the name of a trustee.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
40 By M. A. CLANCY, Ass't Clerk.

IN TAE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 3d day of October, 1888.

Mary J. James vs. William M. James. } No. 11333. Eq. Docket 28.

On motion of the plaintiff, by Mr. C. P. Lincoln, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bonds of matrimony on the ground of cruelty.

By the Court. CHARLES P. JAMES, Justice &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
40 By L. P. WILLIAMS, Ass't Clerk,

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The Second (2d) day of October, 1888.

Augustin Chester, Plaintiff. vs. Ebenezer Morgan, Defendant. } In Equity. No. 11349.

On motion of the plaintiff, by Mr. John Raum, his solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure from the defendant a conveyance to the plaintiff of the premises known and described as lot No. 21 and part lot No. 22, in square No. 816, in the City of Washington, District of Columbia, the indebtedness secured by the conveyance of said premises to the defendant having been fully paid and satisfied.

CHARLES P. JAMES, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
40 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 3d day of October, 1888.

John H. Sis, Plaintiff. vs. Emily A. Moxly et al., Defendants. } No. 11346. Eq. Docket 28.

On motion of the plaintiff, by Messrs. Carusi & Miller, his solicitors, it is ordered that the defendants, George C. Moxly, Lucy J. Moxly and William L. Crawford, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the appointment of a new trustee in place of Richard L. Crawford, deceased, mentioned in deeds of trust from said defendants, George C. Moxly and Lucy J. Moxly, to said Richard L. Crawford, to secure the payment of certain promissory notes to plaintiff; and the object of said suit is also to ascertain what real estate said defendant Emily A. Moxly and James Reily, executrix, and executor of Benjamin F. Moxly, deceased, and also said Emily A. Moxly, as surviving executrix and trustee of said Moxly, sold and conveyed, and in what manner the proceeds of sales have been invested, and also to ascertain whether or not said defendant, Emily A. Moxly, as executrix and trustee, under the will of said Benjamin F. Moxly, and decree of Court passed in Equity Cause of Emily A. Moxly against Mary T. Dent and others, had a right to sell the real estate of said Benjamin F. Moxly, deceased, or any part thereof.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 2d day of October, 1888.

Jacob Tome vs. John L. Bartlett et al. } No. 11331. Docket 28.

On motion of the plaintiff, by Mr. Kimball, his solicitor, it is ordered that the defendant, Israel G. Kimball, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct an error in the name of a trustee.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
40 By M. A. CLANCY, Ass't Clerk.

IN TAE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 3d day of October, 1888.

Mary J. James vs. William M. James. } No. 11333. Eq. Docket 28.

On motion of the plaintiff, by Mr. C. P. Lincoln, her solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this date; otherwise the cause will be proceeded with as in case of default.

The object of this suit is divorce from the bonds of matrimony on the ground of cruelty.

By the Court. CHARLES P. JAMES, Justice &c.
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IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The Second (2d) day of October, 1888.

Augustin Chester, Plaintiff. vs. Ebenezer Morgan, Defendant. } In Equity. No. 11349.

On motion of the plaintiff, by Mr. John Raum, his solicitor, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure from the defendant a conveyance to the plaintiff of the premises known and described as lot No. 21 and part lot No. 22, in square No. 316, in the City of Washington, District of Columbia, the indebtedness secured by the conveyance of said premises to the defendant having been fully paid and satisfied.

CHARLES P. JAMES, Justice.
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WASHINGTON, D. C. - - - OCTOBER 31, 1888

Special Contract Exempting from Liability for Negligence.

In a recent case, Bates *vs.* Old Colony Railroad Company, 17 No. East. Rep., 633, the Supreme Court of Massachusetts held that a privilege accorded to an express messenger, who held a passenger's season ticket, of riding in the baggage car, from which passengers are excluded, is a sufficient consideration for an agreement by him to absolve the railroad company from liability for accident or injury resulting therefrom, even if caused by the company's employes.

The Court said, *inter alia:* "The rules of defendant prohibited passengers from riding in baggage cars, and the plaintiff had no right as a passenger to ride where he was riding at the time he was injured. He was there under a special contract, by which, in consideration that the defendant would allow him to ride in the baggage car, he assumed all risk of accident and injuries resulting therefrom, and agreed to hold the defendant free and discharged from all claims and demands growing out of any injuries received by him while so riding. The parties plainly intended to include injuries resulting from the negligence of the defendant's servants. We need not consider whether the contract would be construed or held to include injuries to which riding in the baggage car did not contribute. There was evidence tending to show that the plaintiff would not have been injured had he been in a passenger car, and that his presence in the baggage car directly contributed to the injury. The ruling of the Court ordering a verdict for the plaintiff was a ruling that the plaintiff was entitled to recover for injury caused by the negligence of the defendant's servants, although his riding in the baggage car contributed to the injury. In considering the correctness of this ruling, the contract of the plaintiff must be taken to have been that he would assume the risk of injury from the negligence of the defendant's servants to which his riding in the baggage car, under the permission given by the defendant, should contribute.

"The objection is that the contract is void; as without consideration, unreasonable and against public policy. We see no objection to the contract as construed and applied in this case. It was the duty of the defendant, as a carrier of passengers, to transport persons over its road, on their paying the established fare, and to see that its servants used due care to secure the safety of its passengers. It was its duty to give, to persons paying the established rates, tickets which would be evidence of their right to carriage, and of the defendant's obligation to carry them with due care. The defendant was ready to do this, and did sell to the plaintiff a season ticket which gave him all the rights of a passenger. The contract in question was made to give him a right which did not belong to him as a passenger. The plaintiff, having the rights of a passenger, desired to ride in the baggage car. The regulations of the defendant, as well as personal prudence, forbade him to ride there. and, if he had attempted to do so, he not only would have assumed all risks of injuries resulting therefrom, but would have been liable to be expelled from the car by the defendant. It is difficult to see upon what ground it can be contended that an agreement of the plaintiff that, in consideration that the defendant would permit him to ride in the baggage car, he would assume all risk of injuries resulting therefrom, is unreasonable or illegal. The defendant was under no obligation to give the permission, and the effect of the plaintiff's agreement was only that the liability of the defendant should not be increased by the permission that the plaintiff, if he should be injured in consequence of being in the baggage car, should not be entitled to recover damages of the defendant, on the ground that he was there by its permission. The contract did not diminish the liability of the defendant. It left the risk assumed by the plaintiff in riding in the baggage car what it would have been without the contract; it only secured him against being ejected from the car.

"The question of the right of carriers to limit their liability for negligence in the discharge of their duty as carriers, by contracts with their customers or passengers in regard to such duties, does not arise under this contract, as construed in this case. (See Railroad *vs.* Lockwood, 17 Wall., 358; Griswold *vs.* Railroad Co., 53 Conn., 371; 4 Atl. Rep., 261. It was not a contract for carriage over the road, but for the use of a particular car. The consideration of the plaintiff's agreement was not the performance of anything by the defendant which it was under any obligation to do, or which the plaintiff had any right to have done. It was a privilege granted to the plaintiff. The plaintiff was not compelled to enter into the contract in order to obtain the rights of a passenger. Having these rights, he sought something more. The contract by which he obtained what he sought did not impair his rights as a passenger, and he was under no compulsion to enter into it."

The Late Mr. Justice Keating.

Sir Henry Singer Keating, who died on Monday, full of years and honors, leaves a name which will, in the history of English law, be associated with the latter days of the Court of Common Pleas. Those days were perhaps more brilliant than the last days of all immediately preceding the extinguishment of this great Court, although Sir Henry Keating took part in both. When in 1875 the Court of Common Pleas was merged in the High Court of Justice to re-issue for a brief period as the Common Pleas Division, Lord Coleridge was Chief Justice, and the justices were, Keating, Brett, Grove, Denman, Archibald and Lindley. When Sir Henry Keating joined the Court in December, 1859, Sir William Erle was Chief Justice, and the justices were Vaughn, Williams, Crowder, Willes, Byles and Keating, which last took the place left va-

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cant at the top by Lord Campbell becoming Lord Chancellor, whose successor in the Court of Queen's Bench was Sir Alexander Cockburn, translated from the chiefship of the Common Pleas. A stronger Court, perhaps, never sat in Westminster Hall. Every judge of it represented the best traditions of the English Bench, and it was specially famed for its knowledge of commercial law. It was a Court of men saturated with the learning of the law of England, but a business-like Court withal, and not wanting in breadth of view.

If any two of the contemporaries on the bench of the Common Pleas became more closely associated than the others, they were Keating and Willes. Both were born in Ireland of English extraction, and educated at Trinity College, Dublin. Keating was ten years older than Willes, but was still a laborious junior on the Oxford Circuit and attending the Oxford and Gloucester Sessions, when Willes was called to the bar. The first meeting took place on a winter's morning in the Temple Gardens. Keating had risen early for his studies, and, to clear his brain, was taking a brisk walk beside the river, when he met Willes on the same errand. Similarity of tastes led to a close friendship, and a few years afterwards Willes was associated with Keating as editor of "Smith's Leading Cases." In 1849 Keating took silk, leaving Willes to plod on as a stuff gown until he was made a judge in 1855 on the same bench to which Keating was added four years later. Meanwhile Keating diverged into politics. He entered Parliament as the representative of Reading in 1852, supported Lord Palmerston, and was Solicitor-General twice. He did not forget the law, but, as a private member, introduced an Act of Parliament which goes by the name of "Keating's Act." Its object was to provide a summary remedy in actions brought on negotiable instruments, which were too commonly defended merely for the purposes of delay. The principle has since been further applied, and the late judge may be considered as the inventor of that very effective and comprehensive legal weapon which goes by the name of "Order XIV." His own Act has never, we believe, been repealed, but only replaced, and has the solitary distinction of a special rule for that purpose among the Rules of Court. Since his retirement from active service on the bench, Sir Henry Keating has taken part in the judgments of the Judicial Committee of the Privy Council. He was never so great a lawyer as Mr. Justice Willes, but his judgments were always brief and to the point, and his judicial manner perfect. Unlike his colleague, Mr. Justice Vaughan Williams, he seldom differed from Chief Justice Erle, who in summing up the qualities of the three judges who usually sat with him, estimated Willes as a man of profound learning, Vaughan Williams as rather obstinate, and Keating as of singular sense.—*Law Journal.*

'TIS THE divine's to convert by faith, the soldier's to overcome by force, the politician's to circumvent by art, but to the bar it especially belongs to prevail with men through means which their reason can comprehend, which their courage need not disdain and which honesty must revere.—*Anon.*

MARYLAND COURT OF APPEALS.

SMITH *vs.* TOWERS.

June 12, 1888.

The power of alienation is not a necessary incident to an equitable estate for life.

The owner of property may devise it in trust and provide that the rents and profits shall go to the beneficiary without being alienable by him or in any manner liable for his debts.

Spendthrift trusts are valid in Maryland.

APPEAL from the Circuit Court for Caroline County.

ROBINSON, J.—The testator devised certain real estate to his friend, John R. Fountain, in trust to collect the rents and profits, and to pay the same to his son Robert, "into his own hands, and not into another, whether claiming by his authority or in any other capacity," and upon his death to convey said real estate to such children of his son Robert as may be living at the time of his death. Upon the construction of this clause of the testator's will two questions arose: First, did the testator mean to give the income of his property to his son to the exclusion of his creditors; and, secondly, if so, are the terms and provisions of the will effectual to carry out this intention. There can be no difficulty whatever as to the first point He not only gives the legal estate to the trustee, but he directs in express terms that he shall pay the income into the hands of his son, and not into the hands of any other person, whether claiming by his authority or in any other capacity. Here, then, is an express provision that the income shall be paid to his son, and an express prohibition against paying it to any other person. If the income in the hands of the trustees is liable to the claims of creditors, the trustee, it is plain, could not carry out the trust. So, construing this will as we do, and it is not, we think, susceptible of any other construction, the testator meant, beyond all question, that the income should be paid into the hands of his son, to the exclusion of all other persons, whether claiming as alienees or as creditors.

The next point is one of more than ordinary importance, and has not heretofore been decided by this Court. A great deal may be said on both sides, and the question is not free of difficulty. In England the discussions are all one way, and it is well settled there that the devise of an equitable estate or interest for life to any person, other than a married woman, carries with it as a necessary incident to such estate or interest, the right of alienation by the *cestui que trust*, and is liable for the payment of his debts, and no provision by way of inhibition or otherwise, which does not operate as a cesser or limitation over of the estate, can protect it against the claims of creditors. Brandon *vs.* Robinson, 18 Ves., 429; Rochford *vs.* Hackman, 9 Hare, 460; Graves *vs.* Dolphin, 1 Sim., 66; Green *vs.* Spicer, 1 Russ. & M., 395; Younghusband *vs.* Gisborne, 1 Colly, 400. In this country, however, the discussions are conflicting, and the Supreme Court of the United States and the Supreme Courts of other States have, after full consideration of the English cases, held that the power of alienation is not a necessary incident to an equitable estate for life, and that the owner of property may, in the free ex-

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ercise of his bounty, so dispose of it as to secure its enjoyment to his beneficiary without making it alienable to him, or liable in any manner for his debts, and that such an intention, when clearly expressed by the founder of the trust, must be respected by the courts. The Supreme Court, after reviewing the highest decisions, in an able opinion by Justice Miller, says: "But the doctrine that the owner of property, in the free exercise of his will in disposing of it, cannot so dispose of it, but that the object of his bounty, who parts with nothing in return, must hold it subject to the debts due his creditors, though that may soon deprive him of all the benefit sought to be conferred by the testator's affection or generosity, is one which we are not prepared to announce as the doctrine of this Court. * * * Nor do we see any reason, in the recognized nature and tenure of property and its transfer by will, why a testator who gives, without any pecuniary return, who gets nothing of property value from the donee, may not attach to that gift the incident of continued use, of uninterrupted benefit of the gift, during the life of the donee." Nichols *vs.* Eaton, 91 U. S., 725, 727.

And in the still later case of Bank *vs.* Adams, 133 Mass., 170, argued in June, 1881, and reargued in March, 1882, the Court unanimously held that property may be conveyed in trust, with the provision that the income shall not be alienated by the beneficiary by anticipation, or be subject to be taken by his creditors in advance of its payment to him, although there is no cesser or limitation over of the estate on such an event. Morton, C. J., says: "We are not able to see that it would violate any principles of sound public policy to permit a testator to give to the object of his bounty such a qualified interest in the income of a trust fund, and thus provide against the improvidence or misfortune of the beneficiary. * * * Under our system, creditors may reach all the property of the debtor not exempt by law, but they cannot enlarge the gift of a founder of a trust, and take more than he has given." And then again in Rife *vs.* Geyer, 59 Pa. St., 393, Judge Sharswood, speaking for the Court, says. "That a benefactor has the power of thus restricting the enjoyment of his bounty through the medium of a trust during the life of the beneficiary is now the unquestionable law of the State." In Shankland's Appeal, 47 Pa. St., 113, the point was expressly decided, and it was there held that a trust to collect and receive rents, and pay over the same to a son of the testratrix for and during the term of his natural life, without being subject to his debts and liabilities, was an active one, and that the legal estate was vested in the trustees, and no act of the *cestui que trust* could deprive him of it, or allow him to interfere with the collection of the income, and no creditor could touch the income or any interest which the *cestui que trust* had in it. In Vermont, Connecticut and Kentucky the highest courts have held that the income of property may be devised in trust for the benefit of the *cestui que trust* for life, to the exclusion of the claims of his creditors. White's Ex'rs *vs.* White, 30 Vt., 338; Levitt *vs.* Beirne, 21 Conn., 1; Pope's Ex'rs. *vs.* Elliott, 5 B. Mon., 56. In other states, however—it may be said in the majority of the states where the question has arisen—the English rule has been adopted without qualification. Tillinghast *vs.* Bradford, 5 R. I., 205; Dick *vs.* Pitchford, 1 Dev. & B. Eq., 480; Heath *vs.* Bishop, 4 Rich. Eq., 46; Bailie *vs.* McWhorter, 56 Ga., 183; Rugely *vs.* Robinson, 10 Ala., 702.

In this State there is no decision to govern us, and, with conflicting decisions in other courts entitled to the highest consideration, the question is one after all to be determined by us on principle. The English decisions rest on two grounds—First, that the right of alienation is a necessary incident to an equitable estate for life, and any restraint upon this right is against the policy of the law, which favors the ready alienation of property; secondly, that public policy forbids that one should have the right to enjoy the income of property to the exclusion of his creditors. Now, the right to sell and dispose of property is a necessary incident, of course, to the absolute ownership of such property. You cannot give to one a fee-simple interest, and then say he shall not sell or dispose of it, because the right to alien is a legal and necessary incident to the estate granted, and to impose such a condition would be repugnant to the nature and tenure of the estate itself. And besides the best interests of the public require that there should be a ready transmission of property.

But the reasons on which the rule is founded do not apply to the transfer of property in trust. Where, by the terms of the trust, the legal estate is vested in a trustee, he takes the legal title, with the necessary incidents attached to it, and among such incidents is the right to alien it. The *cestui que trust* takes the equitable estate with the right to the accrued income, and, when this has been paid to him, the absolute right to dispose of it. So neither the principal nor the income can be said to be inalienable. And, besides, the policy of the law is not against all restraints on the absolute right to dispose of it. You may give one an estate for life, with a provision that the estate shall go over to a third person upon alienation, voluntary or involuntary, by the life tenant. You cannot give property to be held in perpetuity, but you may give one an estate for life, with a limitation over to lives in being, and twenty-one years thereafter. And so by the English rule you may give an equitable estate for life, with a limitation over or a cesser to a third person should the life tenant attempt to alien it. Now, in all instances, there is a restraint to a greater or less degree on the right of alienation. The law does not, therefore, forbid all and any restraints on the right to dispose of it, but only such restraints as may be deemed against the best interests of the community. And the gift of an equitable right to the income from property for the life of the beneficiary, to the exclusion of his alienees, is not, in our opinion, repugnant to the estate or interest granted, nor is it such a restraint on the right of alienation as the law, for reasons of public policy, forbids.

And then as to the other ground, that it is against the policy of the law to prevent one to hold and enjoy an estate or interest in property for life, whether legal or equitable, to the exclusion of his creditors. Now, common honesty requires, of course, that every one should pay his debts, and the policy of the law for centur-

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ies has been to subject the property of a debtor of every kind, which he holds in his own right, to the payment of his debts. He has, as owner of such property, the right to dispose of it as he pleases, and his interest is therefore liable for the payment of his debts. But a *cestui que trust* does not hold the estate or interest in his own right. He has but an equitable and qualified right to the property or to its income, to be held and enjoyed by the beneficiary on certain terms and conditions prescribed by the founder of the trust. The legal title is in the trustee, and the *cestui que trust* derives his title to the income through the instrument by which the trust is created. The donor or devisor, as the absolute owner of the property, has the right to prescribe the terms on which his bounty shall be enjoyed, unless such terms be repugnant to the law. And it is no answer to say that the gift of an equitable right to income, to the exclusion of creditors, is against the policy of the law. This is begging the question. Why is it against the policy of the law? What sound principle does it violate? The creditors of the beneficiary have no right to complain because the founder of the trust did not give his bounty to them. And, if so, what grounds have they to complain because he has seen proper to give it in trust, to be received by the trustee and to be paid to another, and not to be liable while in the hands of the trustee to the creditors of the *cestui que trust*. All deeds and wills, and other instruments by which such trusts are created, are required by law to be recorded in the public offices, and creditors have notice of the terms and conditions on which the beneficiary is entitled to the income of the property. They know that the founder of the trust has declared that this income shall be paid to the object of his bounty, to the exclusion of creditors, and if, under such circumstances, they see proper to give credit to one who has but an equitable and qualified right to the enjoyment of property, they do so with their eyes open.

It cannot be said that credit was given upon such a qualified right to the enjoyment of the income of property, or that creditors have been deceived or misled; and if the beneficiary is dishonest enough not to apply the income when received by him to the payment of his debts, creditors have no right to complain because they cannot subject it in the hands of the trustee to the payment of their claims, against the express terms of the trust. The hardship to them is one that will surely bring about its own remedy, for the dishonest beneficiary, it is plain, would soon be without credit. And then, as to the rights of creditors, these may be defeated, even according to the English decisions, by providing that in the event of the recovery of a judgment against the *cestui que trust*, or upon his insolvency, his interest in the property shall cease and shall go to another. Now, what advantage to the creditor is the cesser or limitation over? What he wants is the money due to him, and this is not paid by depriving the beneficiary of the property. But it may be said that, sooner than loose his interest in the property, self-interest, if no higher consideration, will prompt him to pay his debts. There is force in this; but with the best intentions any one may, by the chances and hazards incident to every pursuit in life, be unable to pay his debts, and in that event, by depriving one of his property by limitation over to a third person, you may deprive him of the very means by which he might in the future repair his fortune. So it does not seem to us there is any substantial advantage to the creditor in thus permitting the founder of the trust to do that indirectly which we think he can do directly. And then, again, by the English rule, the rights of creditors may be excluded by providing that the income may be paid or not to the beneficiary, at the option of the trustee. To impose a requirement so harsh in itself upon the bounty of a donor or devisor, who may desire to provide for the certain support of the object of his bounty, is not warranted, it seems to us, by any principle of justice or sound public policy. And a rule of law which requires this to be done, and one which may be evaded by carefully drawn terms and provisions, is hardly worth preserving. Upon principle, therefore, we are of opinion that the founder of a trust may provide in direct terms that his property shall go to his beneficiary, to the exclusion of his alienees and to the exclusion of his creditors. This being so, the rents and profits in the hands of the trustee, and which the testator in the will before us directs shall be paid into the hands of his son Robert, and "not into the hands of another, whether claiming by his authority or otherwise," cannot, in our opinion, be reached by his creditors by any process, either at law or in equity, before such rents and profits are paid to him.

Judgment affirmed.

ALVEY, C. J., and BRYAN, J., dissent.

SENATOR WADE HAMPTON tells this story about Senator "Zeb" Vance's first case in the North Carolina Supreme Court: His client had been worsted in the lower Court, and Vance took an appeal. It was his first argument in the Court, and he took great pains with it. When the Court came to render a decision the Chief Justice quoted Vance's argument in full. As he was proceeding Vance looked proudly around at the other lawyers and cheerfully rubbed his hands. The Court read Vance's argument through, and then said: "For these reasons we affirm the decision of the Court below." Vance was dumbfounded. His own argument was used as the basis of a decision against his client.

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1. A COMMERCIAL AGENT must ordinarily obey his principal's instructions.

2. Where goods ordered sold, burn within a reasonable time after such order was given and before sale, the delay on the part of the agent in obeying such instructions will not be considered, in the absence of fraud, the proximate cause of the loss.

3. Neither will an agent be responsible in such a case, in the face of a legislative enactment prohibiting the delivery of warehoused goods without the return and cancellation of receipts given when the same were placed in store, where such receipts are retained by the owner of the property in question. Lehman *vs.* Pritchett, Supreme Court of Alabama, June 26, 1888.

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ENGLISH COURT OF APPEAL.

BUTLER
vs.
MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY COMPANY.

June 12, 1888.

The plaintiff was a passenger by the defendants' railway. The ticket issued to him incorporated by reference certain conditions published in the defendants' time tables, one of which was that every passenger should show and deliver up his ticket to any duly authorized servant of the company, when required to do so for any purpose, and any passenger traveling without a ticket, or failing or refusing to show or deliver up such ticket as aforesaid, should be required to pay the fare from the station whence the train originally started. The plaintiff having lost the ticket was unable to produce it when required to do so during the journey by one of the defendants' servants. The plaintiff was thereupon required to pay the fare from the station whence the train had started, and on his declining to do so, was forcibly removed bv the defendants' servants from the carriage in which he was traveling, no more force, however, being used than was necessary for his removal. He thereupon sued the defendants for assault.

Held, that the contract between the plaintiff and the defendants did not by implication authorize the defendants to remove the plaintiff from the carriage on his failing to produce a ticket and refusing to pay the fare, as provided by the conditon; that the defendants were not justified in so removing him, and that the action was, therefore, maintainable.

The plaintiff was a passenger by the defendants' railway. He had taken a return ticket for a journey by an excursion train from Sheffield to Manchester and back. The ticket issued to him had upon it the words "subject to the conditions contained in the company's time tables and advertisements." In the time-tables issued by the defendants were published certain by-laws and regulations headed "By-laws and regulations made by the company, with the approval of the board of trade, for regulating the traveling upon and using the railways belonging to the said company," and which were stated to be made under the seal of the company and approved by the board of trade. One of such regulations was to the following effect:

"No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued. Every passenger shall show and deliver up his ticket to any duly authorized servant of the company when required to do so for any purpose; any passenger traveling without a ticket, or failing or refusing to show or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of his journey."

Certain of the other by-laws and regulations expressly provided for the removal of passengers from the company's carriages and premises, *e. g.*, those with regard to persons intoxicated or using obscene and abusive language, or smoking in carriages not specially provided for that purpose.

The plaintiff gave up the outward half of his ticket at Manchester, and on his return journey was required at Wadsley Bridge station, a mile out of Sheffield, to produce his ticket, but was unable to do so, having lost the return half of the ticket. The ticket collector required him to pay the ordinary third-class fare from Manchester, which he declined to do. The company's servants refused to allow him to proceed without paying such fare, although he offered his name and address; and as he would not alight from the carriage he was removed therefrom by force, he thereupon, sued the company for assault. The jury found that no more force had been used in removing him than was necessary for the purpose, and assessed the damages at £25. It was agreed that the learned judge should decide all questions of fact other than the questions as to whether there had been an excess of force used and as to the amount of the damages. The learned judge gave judgment for the defendants, holding it to be an implied term of the contract that, if the passenger failed to produce his ticket, his right to be carried ceased, and that he might be removed from the carriage.

WADDY, Q. C., and LAWSON WALTON, for plaintiff.

LOCKWOOD, Q. C., and CYRIL DODD, for defendants.

LORD ESHER, M. R.—In this case the plaintiff, who was a passenger by defendants' railway, had paid for a ticket, but had lost it. At a certain stage of the journey he was asked to produce his ticket, and not being able to do so, was told that he must pay the ordinary third-class fare from Manchester to Sheffield. He refused to do so; and thereupon the defendants' servants assumed the power of pulling the plaintiff forcibly out of the railway carriage in which he was traveling. The plaintiff brings an action of assault against the defendants for this act of their servants; and the defendants assert that they were justified in removing the plaintiff from their carriage by force, using no more force than was necessary for the purpose of overcoming his resistance. The defendants put it that the plaintiff was unlawfully upon their premises, and it is admitted that the allegation that he was so is material to their defense.

The question, therefore, is, whether it is true that he was unlawfully on their premises? I do not think that is made out. What is the nature of the relation between the plaintiff and the defendants? It is, as it appears to me, a contractual relation. It was alleged that the contract was for a right to go on defendants' land in the nature of an easement, but that, there being no grant of an easement under seal, there was only a license given by the defendants to go on their premises, which they could revoke. All I will say with regard to that contention is, that though it may have been quite right for the defendants' counsel to suggest the point, it seems to me when considered to be contrary to good sense. To say that a passenger by railway from London to Liverpool is to have an easement all over the line between those places seems to me really ridiculous; and the absurdity of such a view of the case becomes greater when we remember that companies often contract to convey passengers over the lines of

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other companies. It seems to me, therefore, that the considerations upon which the case of Wood *vs.* Leadbitter, 13 M. & W., 838, turned are not applicable in this case. The contract between the plaintiff and the defendants really is, that on his paying the fare for the journey, they will carry him in their carriage on the journey, for which he has so paid the fare, using due care for his safety while so doing. That contract may be subject to conditions by reason of notice given to that effect upon the ticket incorporating such conditions. In this case it is said that the ticket referred to certain conditions and thereby incorporated them into the contract. The only conditions which can be alleged to be so incorporated into this contract are the by-laws and regulations which the company made in pursuance of the authority given them for that purpose by statute. They can only make by-laws and regulations in pursuance of their statutory powers, and accordingly we find that they assume to make certain by-laws and regulations as required under the Railways Clauses Consolidation Act, 1845, viz., under the seal of the company and with the approval of the board of trade, and such regulations are the only conditions which can be looked on as incorporated by reference by this ticket. One of such by-laws and regulations provides that "Every passenger shall show and deliver up his ticket to any duly authorized servant of the company when required to do so for any purpose; and any passenger traveling without a ticket, or failing or refusing to show or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of his journey." I do not think it is necessary for the purposes of this case to discuss the question whether that is a valid or reasonable regulation, or how far the plaintiff would be bound by it if unreasonable. It would seem, if the decision in Saunders *vs.* Southeastern Ry. Co., 5 Q. B. Div., 456, be correct, not to be reasonable."

Whenever it becomes necessary we must deal with that question, but I think we may for the present purpose assume that the condition is reasonable. The effect of it is that the passenger is under an obligation to show his ticket, when asked to do so, and if he fails to do so, a certain consequence is to follow, viz., that he must pay the fare from the station whence the train started. But suppose that he refuses to do so, he no doubt breaks his contract; but does it result that the company's servants may lay hands on him and remove him from the carriage? I do not think that it does. The remedy is by proceeding against him for the amount of the fare he refuses to pay. Where is there any contract by which he has agreed that if he fails to show a ticket or to pay the fare mentioned in the regulation, the company may lay hands on him and put him out of the carriage by force? No one has any right to lay hands forcibly on a man in the absence of some legal authority to do so or some agreement to that effect. It is argued that such a right on the part of the company must be implied, but no court has a right to imply any term as between parties which was not clearly and obviously within the contemplation of both the parties, and I cannot agree with the learned judge in the court below in holding that such a term should be implied. For these reasons I think his decision was wrong, and that the appeal should be allowed and judgment entered for the plaintiff.

LINDLEY, L. J.—I am of the same opinion. The question raised by this case is one of great importance both to the company and the passenger. One knows that railway companies may be placed in great difficulty by the unscrupulous attempts of fraudulent persons to cheat them, and I do not desire to express any opinion one way or the other on the question whether or not some condition might be made, which, if properly worded, would justify the company in future in taking the course they claimed to take in the present case. There does not seem to me to be any by-law or regulation in this case which authorized the company to remove from their carriage a passenger who failed to produce his ticket. That consideration seems to me to be the key to the whole case. How can the company justify laying hands on the plaintiff? The plaintiff had taken his ticket, and the effect was that there was a contract by the company to carry him to Manchester and back. There is no authority as yet to the effect that such a contract of carriage is a contract for an interest in land It seems to me to be a totally different thing from a contract for an interest in land, and it seems to me absurd to treat the case as one of revocable license. It is a case of a contract for carriage. The doctrine of Wood *vs.* Leadbitter, 13 M. & W., 838, does not appear to me to be at all applicable to the case of such a contract. Supposing that the contract of carriage involved a contract for production of the ticket or payment of another fare, and the plaintiff broke that part of the contract, does it follow as a matter of law that the defendants could turn him out of the carriage? The remedy is to take proceedings for the breach of contract on his part. It is argued that having broken the contract he was no longer lawfully on the defendants' premises. I do not see that that consequence follows. It does not appear to me that the contract between the plaintiff and the defendants was cancelled by reason of the plaintiff's breach of contract. In my opinion the defendants failed to show that the plaintiff was unlawfully upon their premises, and therefore they had no right to remove him therefrom by force. For these reasons I agree that the appeal should be allowed.

LOPES, L. J.—It is somewhat extraordinary that there should be no authority on such an important point as that raised in the present case. To my mind the case is very clear. In the first place, it is to be observed that there is no by-law or regulation which can be relied on as protecting the defendants in respect of what their servants did in this case. Whether any regulation could be framed which would do so, I doubt; but it is unnecessary to express any opinion as to that, because there is no such by-law or regulation in this case. That being so, the question is whether the company's servants were justified in the absence of any such by-law or regulation in laying hands on the plaintiff as they did. The plaintiff had admittedly properly taken his ticket for the journey from Shefield to Manchester and back, and had paid the full fare for the journey, and admittedly he had lost his ticket

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accidently. The effect is, to my mind, that he was lawfully in the defendant's carriage. It seems to me sufficient to state so much to show that tbe defendants were not justified in assaulting him as they did. It is argued that there was a breach by him of an implied contract. I find it difficult to understand what the nature of the suggested implication could be, unless it were to the effect that he agreed or consented, that if he lost his ticket, the company should be authorized to lay hands on him and remove him from their carriage. I see no evidence whatever of any contract of that kind. If there were any breach of contract by him, it seems to me clear that they were not entitled to lay hands on him, but that their remedy would be by proceeding for the amount of the fare which he refused to pay. The case of Wood *vs.* Leadbitter, 13 M. & W., 838, was relied upon by the counsel for the defendants; but I do not think that the principles enunciated in that case have any application to the present. The question there was as to the right to go upon land. The present case is one of a contract to carry with reasonable care, and has nothing to do with land or any easement over or license to go upon land. It does not appear to me that any question as to the revocability or otherwise of a license arises. For these reasons I agree that the appeal should be allowed.

Appeal allowed.

A Profane Chancellor.

There are few readers of the *Herald* who have not heard of Lord Chancellor Thurlow and read many of the innumerable anecdotes of his profanity, for he could not open his mouth in the most ordinary conversation without swearing, and even in the presence of majesty itself he would not refrain. Once when he had taken some bills which had passed parliament for George III to sign he said "It was all d—d nonsense for the king to try to understand them, and he had better just sign them and say no more about it." Once when traveling in the country he was detained at a country inn by a thunderstorm, and to pass the time he asked the hostess if she had any books in the house. She brought him the Bible and Horseley's sermons, saying that was her stock. The former he threw briskly aside, and swore around, mouthing oath or two at the sermons. But the case was desperate, and rather than sit listlessly idle, his lordship began to read the sermons. He became so enthralled by the unknown preacher that he read on long after the rain had ceased. He kept reading as he went out to take his carriage, and, tossing the book back to the hostess, he said: "I wish I may be d—d if I don't make that fellow a bishop." And it was not very long before that obscure clergyman became Bishop of London. The proper outcome and moral of the story of Thurlow's absorption in the sermons should have been that they were the means of his conversions. But, unfortunately, the truth of history must declare that neither those sermons, nor any other, nor anything else, were ever the means of converting the beetle-browed and black-faced chancellor.—*Chicago Herald.*

NEW YORK COURT OF APPEALS.

MATTER OF ERNEST DAWSON.

Decided June, 1888.

Where a sheriff, after receiving moneys on attachment, and before judgment in the action, absconds with the money, the loss must fall on the plaintiff in the action.

Of two innocent parties, the one who has put it in the power of a third party to commit the wrong must bear the loss occasioned thereby.

Appeal from an order of the Supreme Court, General Term, First Department, affirming an order made at Special Term.

EARL, J.—In June, 1885, Wilson & Knowlton commenced an action in the Supreme Court against Dawson to recover damages for breach of contract, and obtained an attachment against Dawson's property, on the ground of his non-residence. The attachment was issued to Alexander V. Davidson, then sheriff of New York County, and he attached a certain debt owing from McDonald, Pearce & Co. to Dawson. Such proceedings were thereafter taken in that action on behalf of the plaintiffs that McDonald, Pearce & Co. paid upon the debt attached to Davidson, as sheriff, the sum of $2,316.43. Thereafter, and before judgment and execution in the action, Davidson misappropriated the money and absconded. The question now to be determined is, who is to bear the loss of the sheriff's misconduct and default, the plaintiffs or the defendant?

We think the loss should fall upon the plaintiffs. If this money has been seized by virtue of an execution, and the defendant had been deprived thereof, it is well settled that the loss would fall upon the plaintiffs, and that, to the extent of the property thus taken, the judgment and execution would be satisfied. (People *vs.* Hopson, 1 Denio, 578; Peck *vs.* Tiffany, 2 N. Y., 456.) In those cases the loss was held to fall upon the judgment creditors because property of the defendants was taken and lost to them in consequence of legal measures instituted by the creditors. We think the same rule, and for precisely the same reasons, should be applied to a case of property seized by virtue of an attachment.

An attachment differs from an execution in that, by virtue of it, the property of the alleged debtor is seized in advance for the satisfaction of any judgment that may thereafter be recovered in the action, and during the pendency of the action the property is held by the attaching officer as security for the judgment thereafter to be recovered. As in the case of an execution the property is seized at the instigation of the attaching creditor and for his benefit, and if it is lost to the debtor the loss should fall upon the creditor, and he should take his remedy against the sheriff upon his official bond.

When one of two innocent parties must suffer by the wrong of a third party, it is frequently difficult to find an intelligible ground for placing the loss upon the one rather than upon the other, and the difficulty is solved without any other reason by holding that that one should bear the loss who put it in the power of the third party to commit the wrong. That rule may be applied here. The plaintiffs not only

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caused the attachment to be issued to the sheriff, but they procured the order which compelled McDowell, Pearce & Co. to pay the defendant's money to the sheriff.

If this money had been seized by virtue of an execution, it would at once have operated as a payment *pro tanto* upon the execution. Here, in theory of law, the money is in the possession of the sheriff, and when execution was issued to him it was at once applicable thereon, and must be deemed to have been so applied. If the sheriff had been found within his county, and the execution had actually been delivered to him, he could not have returned the same unsatisfied, but could have been compelled to return the same satisfied as to the amount of money received by him upon the attachment (Code, sec. 708), and such a return would have been conclusive in favor of the defendant, and would have left the plaintiffs with their remedy against the sheriff for money received by him.

We are, therefore, of opinion that the order should be affirmed, with costs.

All concur.

The Character of a Solicitor in 1675.

A correspondent has favored us with a copy of a printed pamphlet dated 1675, which he has unearthed in the course of some antiquarian researches, and which illustrates very curiously the reputation in which solicitors, as contrasted with attorneys, were then held. The pamphlet does not contain the name of any author, but, singularly enough, the title page bears the words "London: printed for K * * * 1675." The writer says: "A solicitor is a pettifogging sophister, one whom by the same figure that a North Country peddler is a merchant man, you may stile a lawyer. List him an attorney and you smother Tom Thumb in a pudding. The very name of a scrivener outreaches him, and he is swallowed up in the praise, like Sir Hudibras in a great saddle. Nothing to be seen but the giddy feathers in his crown. Some say he's a gentleman, but he becomes the epithet as a swine's snout does a carbuncle, he is just such another dunghill rampant. The silly countryman (who seeing an ape in a scrrlet coat, best [*sic*] his young worship and gave his lordship joy) did not slander his complement with worse application than he that names him a law giver. The cook that served up a rope in a pye (to continue the frolick) might have wrapped up such a pettifogger as this in his bill of fare. He is a will-with-a-wisp, a wit whither thou woo't. Proteus has not more shapes than he can perform offices. He can instruct with the counsellors, plead as an attorney; he has all the tricks and quillets of an informer, nay, and a bum too, for a need—in a word, he is a Jack-of-all-trades, and his shatter'd brain, like a crackt looking-glass, represents a thousand fancies. He calls himself Esquire of the Quill, but to see how he tugs at his pen and belaboureth his half-amazed clyents with a cudgel of cramp words, it would make a dog break his halter. The jugling Skip Jack being lately put to his last shift, has metamorphosed a needle into a goose feather, and the sole of an old shoe into a sheet of paper, for the best of his profession have been forlorn taylors, outcast brokers, drunken coblers, or the offspring of such like rabble rout. He hugs the papers as the devil hugg'd the witch, for they are an advancement of his science, these frisk about him like a swarm of bees, yet he is a man of vast practice if he has but a half a score of 'em. If his lowsie clyents chance to recover an old rotten barn or a weather-beaten cottage, he will be sure to have two-third parts for a quantum meruit.

"He is Lord Paramount among the shifting bailiffs, and a sworn brother to the marshall men, and is behind none of them at the extortive faculty, having the confidence to demand item for his pains and trouble, when all the while he does nothing but hover over a quart pot. He is as offensive to the attorneys as flies are to a galled horse, and whereas their *ne plus ultra* is ten groats, Mr. Solicitor forsooth claims double fees with authority, and if the client prove so saucy to deny it, he will rage like Tom of Bedlam, but if that will not prevail he'll cast a squeezing look like that of Vespasian. * * * In the society of true and genuine lawyers he is like an owl among so many lapwings, and is no more fit to converse with them than a hog-herd is to preach a sermon or a cinder-wench to wait upon a countess. * * * He writes a bill of costs in such worm-eaten characters that 'tis past the skill of a Rosicrucian to discover the apocaliptical meaning, yet for all that he will not abate you an ace of the *summa totalis*, and that, to be sure, shall be plain enough. Wherefore he may very fitly be called the inquisition of the purse, * * * and more than that, he scorns to cheat you in hugger mugger, but will not fail to do so before your face. He is like the man that cried, Any tooth, good barber, rather than stand out for a wrangler, if he can pump no chink out of you. He will manage your cause for a breakfast, being a notable artist at spunging. Oh! he's a terrible slaughter man at a Thanksgiving dinner. He outstrives a bailiff in all his cheating faculties, and I know none outstrips him except his infernal grandfather. In fine he is the yeoman's horseleech, the gentleman's rubbing brush, and the courtier's *quid pro quo*. He is the *summum bonum* of knavery; in judgment a meer pigmy; in shew the beard of a demi-blazing star. To be brief, he is like a lamp without oil, a trumpet without a sound, a smoke without fire, a fiddle out of tune, or a bell without a clapper; and differs from a lawyer as a shrimp does from a lobster, a frog from an elephant, or a tom tit from an eagle."—*Solicitors' Journal.*

1. A PRINCIPAL may, by parol, empower an agent to sell land in his own name, and enter into a written contract for that purpose.

2. A simple parol authority will not authorize an agent to sign for his principal a written contract for the sale of land.

3. A special agent for a particular purpose must pursue his authority strictly. Those who deal with him are chargeable with notice of the extent of his authority.

4. One who buys from an agent must, at his peril, ascertain the limitations of the agent's power. Milne *vs.* Kleb, New Jersey Court of Chancery, July 5, 1888.

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Comfort for Cowards.

In a recent case, People *vs.* Lennon, 38 N. W. Rep., 871, the Supreme Court of Michigan considered a very interesting question in a prosecution for assault with intent to do great bodily harm.

The trial Court held that an instruction if defendant's belief as to the necessity of the use of force to protect himself arose from want of courage and an unwarrantable cowardice under the circumstances then presented to him, he would not be excused upon the ground of self-defense.

Upon appeal, the Supreme Court held this instruction to be erroneous, and said: "I do not think it proper that a jury should be authorized to determine the standard of courage in a case of self defense, or whether the party attacked, in what he did in his defense, acted cowardly, and, therefore, without warrant. There is no question of courage or cowardice in the case. * * * The question to be determined is: Did the accused, under all the circumstauces of the assault, as it appeared to him, honestly believe that he was in danger of his life, or great bodily harm, and that it was necessary to do what he did in order to save himself from such apparent threatened danger? If so, the inquiry is ended. It can and ought to make no difference as to whether he was a bold, strong man, used to affrays and personal encounters, or a weak, timid man, unacquainted with broils or assaults, as to the sufficiency of the reason for his action, if the jury believe that he acted honestly in fear of his life or great bodily harm. The fact of his *physical and mental make up* (!), and his experience in danger, are to be considered, it is true, as bearing upon the honesty of his alleged belief upon which he bases his right to act; but in such consideration the fact that the accused is weak, timid and cowardly by nature, is to be weighed in his favor and not against him. To hold otherwise would be to set at naught and to rule at variance with the well known laws of human nature, and to place the weak and timid at the mercy of the strong. It is bad enough to be constitutionally a coward without having the law also declare that the coward has no right to act in self-defense till he reaches the point where a man of average courage would have defended himself in the same manner, and to have the quantum of courage in such cases determined by a jury, sitting in safety and cool blood, listening to what must always be a tame recital of the facts, compared with their appearance at the time they occurred."

Upon the question as to the reasonableness of the excited fear which justifies self-defense, there has been some conflict in the authorities, but the rule laid down in this case is undoubtedly the sound one.

What has been tersely said by Bishop, 1 Crim. Law, sec. 874, as to mental deficiency, applies to the present case. "It is not criminal to be born underwitted, or with less intellect than some other person; therefore, if one of little understanding, acting carefully, arrives at the conclusion that a defense of himself is necessary, the law should protect him in making it, precisely as if he possessed a strong mind which was misled by graver appearances."

THE COURTS.

SUPREME COURT OF THE UNITED STATES.

October 29.

McKenzie Semple, of New York City, and James M. Kerr, of Rochester, N. Y., were admitted to practice.

195. The County of Livingston, Mo., *vs.* The First Nat. B. of Portsmouth, N. H. Judgment affirmed with costs and interest.

33. Culliford *vs.* John B. Vinet, etc. Decree reversed with costs and cause remanded.

781. Asher *vs.* The State of Texas. Judgment reversed with costs and cause remanded.

28. The Ga. R. R. and Banking Co. *vs.* Railroad Com. of Ga. Judgment affirmed with costs.

38. Prouty *vs.* The Lake Shore and Mich. South. R. R. Co. Ordered for reargument.

1044. The Piano Manf'g Co. *vs.* Graham. Motion to advance to be heard with No. 108 denied, but leave granted to file brief in 108.

5. In the matter of Hallon Parker, petitioner. Motion for leave to file petition for writ of mandamus granted and rule to show cause ordered to issue, returnable on the second Monday in January next.

1037. Chappel *vs.* Bradshaw. Dismissed for the want of jurisdiction.

1367. The First Nat. Bank of Chicago *vs.* Corbin. On motion of Mr. J. M. Flower for appellant advanced to be heard with No. 430 as one case.

430. Graves et al. *vs.* Corbin. Appeal of Flower, Remy and Gregory, three of the appellants in this cause. Dismissed with costs, on motion of Mr. J. M. Flower for appellants, as per stipulation on file.

1409. Jaehne *vs.* The People of the State of New York. Argued.

42. M. L. Bundy *vs.* Cocke. Argued and submitted.

43. Pollok *vs.* The Brush Electric Association of St. Louis. Argued and submitted.

44. Redings et al., etc., *vs.* W. K. Johnson, etc. Submitted.

45. Banks et al. *vs.* Manchester. Submitted.

46. The Ger. Savings Bank, of Davenport, Iowa, *vs.* The County of Franklin, Ill. Submitted.

47. Means *vs.* Clement Dowd et al. Continued.

48. James Coyne *vs.* The Union Pac. Ry. Co. Continued.

SUPREME COURT OF THE D. C.

IN EQUITY.—New Suits.

October 20.

11403. Augustin I. Ambler and wife *vs.* John B. Archer et al. Discovery, account and general relief. Com. sol., W. Willoughby.

October 22.

11404. Mary Murray et al. *vs.* James Keneally et al. For partition. Com. sol., R. Hagner.

11405. William House *vs.* Eliza House. For divorce and for sale. Com. sol., F. W. Jones.

11406. Vianna Nelson *vs.* George W. Prescott et al. To vacate deed. Com. sol., Frank H. Stephens.

11407. Heber W. Olmstead, alleged lunatic. Upon petition of H. W. Olmstead. To appoint committee. Com. sol., H. W. Olmstead.

11408. Jacob B. Fisher, alleged lunatic. Upon petition of Commissioners of the District of Columbia. To inquire into lunacy. Com. sol., H. E. Davis.

11409. Charles H. Pearson, alleged lunatic. Upon petition of same. For inquiry into lunacy. Com. sol., Same.

11410. John W. Carr *vs.* Minnie Carr. For divorce. Com. sol., C. Carrington.

11411. ——— *vs.* ———. Com. sol., J. McD. Carrington.

October 23.

11412. Hattie C. Combs et al. *vs.* William H. Combs. To construe trust. Com. sol., Job Barnard.

October 25.

11413. Mary Ann Boyle *vs.* Samuel T. Drury. To substitute trustee. Com. sol., L. Williamson.

11414. Nettie Riley *vs.* Thomas Riley. For divorce. Com. sol., C. Carrington.

October 27.

11415. Dayton S. Ward *vs.* Elizabeth P. Blackford et al. For authority to pay taxes and to make sure lien. Com. sols., Gordon & Gordon.

11416. Samuel A. Peugh *vs.* James Millinger. Injunction. Com. sol., S. S. Henkle.

11417. James Barker et al. *vs.* Andrew Barker. Com. sol., A. B. Williams.

October 29.

11418. George Taylor *vs.* Tyler & Rutherford. Injunction.

October 30.

11419. Thomas Oliver *vs.* Rose Williams et al. Creditor's bill. Com. sol, Mills Dean.

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11420. John L. Crouse, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., H. E. Davis.

CIRCUIT COURT.—New Suits at Law.

October 22.

29049. Duncanson Bros. *vs.* Abraham F. Barker. Note, $337. Plffs attys, Garnett and Mackall.

29050. William A. Sharswood *vs.* Millard F. Peake et al. Note, $103. Plff's attys, Same.

29051. Henry McShane & Co. *vs.* The Columbia Brick Co. Note, $120. Plff's atty, F. W. Jones.

October 23.

29052. Daniel Giesler *vs.* Nathan W. Walker. Judgment of Justice Walter, $82.34. Plff's atty, Charles Walter.

29053. The Boston Type Foundry Co. of Boston, to the use of the Union Type Foundry of Chicago, *vs.* Lewis G. Marini. $527.36. Plff's atty, William G. Johnson.

29054. The Central Type Foundry Co. of St. Louis, to the use of the Union Type Foundry Co. of Chicago, *vs.* Same. $718.63. Plff's atty, Same.

29055. Stephen O. Fuguet et al. *vs.* Jesse W. Gurtizen. $164.20 Plff's atty, Birney & Birney.

29056. Gould Marrion et al. *vs.* Theresa Williams. Ejectment. Plff's atty, F. T. Browning.

October 24.

29057. Felix Quander *vs.* Frank Jonas. Replevin. Plff's attys, Jackson and Clarke.

29058. Louis E. Phillips *vs.* William F. Ogle. $96.00.

29059. Jacob Lefo *vs.* Simon Schwartz. Notes, $218. Plff's atty, W. K. Duhamel.

October 26.

29060. John J. Appich *vs.* John O'Meara. Judgment of Justice O'Neal, $100. Plff's atty. J. T. Cull.

29061. James P. Ryon et al. *vs.* John W. Clampitt et al. Note, $150. Plff's atty, W. Wheeler.

October 27.

29062. Pardee Carpenter *vs.* Harriet P. Wood et al., N. Y., Judgment, $1,496.72. Plff's attys, Henderson and Calver.

29063. William A. Faires *vs.* Frederick B. McGuire et al Damages, $15,000. Plff's atty, A. C. Bradley.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Richard A. Gillem**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of October, 1888.

MELINDA A. GILLEM, Ex'x, 1620 O st. n. w.

44 No. 3255. Ad. D. 14. Henry Wise Garnett, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

James Edward Green et al. *vs.* **Sarah J. Kennedy et al.** } 11181. Equity Docket 28.

Thomas M. Fields, trustee, having reported to this Court that on October 8, 1888, he sold lot 9, in square 5, to James Boyce, for $2,900.00 cash, it is, this twenty-fourth day of October, 1888, ordered that said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before November 24, next.

Provided a copy of this order be published once a week for the three weeks next preceding said last-mentioned date in the WASHINGTON LAW REPORTER.

By the Court. W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

44 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Wm. H. Marshall and others, Plaintiffs. *vs.* **Hattie and Alice Marshall,** Defendants. } No. 11243.

It is, this 27th day of October, A. D. 1888, ordered by the Court that the sale made and reported by Eugene F. Arnold, trustee of the real estate decreed, in this cause, on July, the eighteenth, A. D. 1888, to be sold, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the thirty-first day of October instant.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER to be published on the 31st day of October instant, and further, that a copy of this order be printed once before said day in *The Evening Star*, and also, that a copy of the order be served on the guardian ad litem of the infant defendants within two days from this date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

44 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Equity.

Bertha L. Robinson *vs.* **George F. Robinson et al.** } 11235. Eq. Doc. 28.

Charles M. Matthews, trustee in the above cause, having made sale of what is known as the Foundry Mill property, on the Chesapeake and Ohio Canal, situated west of Georgetown, in the District of Columbia, with all the real estate, milling property and water rights thereto belonging to Robert B. Tenney, of the District of Columbia, at and for the sum of fifty-nine hundred ($5,900.00) dollars, it is, by the Court, this 30th day of October, 1888, ordered that said sale be, and the same is, ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of November, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before said 30th day of November, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

44 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 30th, 1888.

In the case of Joseph Auerbach, Administrator of **Adolph H. Von Luettwitz**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 23d day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.

44 No. 2690. Ad. D. 13. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. Richards et al. *vs.* **Charles Medford et al.** } 11036 and 11170 (Consolidated.) Equity Docket 28.

The trustees herein, A. B. Duvall, J. H. Marr and W. J. Newton, having reported to the Court that they have sold to Samuel Ross sub-lots 31 to 38, square 640, at and for $1,500.00 for each of said sub-lots, and sub-lot 39 in said square, at and for $2,570, aggregating $14,510, it is, this 29th day of October, A. D. 1888, ordered that said sales be ratified and confirmed finally, unless cause to the contrary be shown on or before the 29th day of November next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,

44 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Laura V. Harbaugh et al.
vs.
Isabella M. Harbaugh et al. } No. 11327. Equity.

James S. Edwards, trustee herein, having reported a sale of lot 112, of the subdivision made by George W. Clark, of certain lots in square 193, in the City of Washington, in the District of Columbia, to Charles P. Stone, for $5,200.

It is, this 22d day of October, 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 22d day of November, 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
43 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 23d, 1888.

In the case of Martin F. Morris, Executor of **William Bagnam**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 9th day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
Geo. E. Hamilton and M. J. Colbert, Proctors.
43 No. 2810. Ad. D. 13.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 23d, 1888.

In the case of Morgan R., James D. and Frederick J. Goddard, Executors of **James Goddard**, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 16th day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
43 No. 2841. Ad. D. 13. C. M. Matthews, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of October, A. D. 1888.

Charles A. Springman,
Plaintiff,
vs.
Henry A. Mathiot,
Defendant. } No. 11283. Eq. Docket 28.

On motion of the plaintiff, by Mr. Perry, his solicitor, it is ordered that the defendant, **Henry A. Mathiot**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct a defective acknowledgment by George Mathiot, deceased, father of the said defendant, of a deed made by him, the said George Mathiot, to Robert M. Combs, on the 3d day of September, 1851, the said deed purporting to convey original lot 14, in square 693, in the City of Washington, in the District of Columbia. The plaintiff claims as assignee of the said Combs, and the defendant is sued upon the said George Mathoit's covenant for further conveyance and as one of the heirs at law of the said George Mathiot, to whom as such the said lot descended.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
44 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 30th, 1888.

In the case of Leon Tobriner, Administrator of **Horatio Moran**, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 14th day of December, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
44 No. 2644. Ad. D. 13. A. H. Bell, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Norfolk Co., Virginia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Nancy Ann Sykes**, otherwise **Annie Wilson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 20th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 20th day of October, 1888.

WILLIAM T. SYKES, Adm'r.
44 No. 3241. Ad. D. 14. A. B. Williams, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 26th, 1888.

In the matter of the Estate of **Louisa Clements**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament of the said deceased has this day been made by Robert D. Frasier.

All persons interested are hereby notified to appear in this Court on Friday, the 23d day of November next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Record as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
44 No. 3254. Ad. D. 14. J. A. Maedel, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of Cincinnati, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Ada Fairfax**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of October, 1888.

WM. T. LUDLOW, Adm'r,
Care of JOHN SELDEN, 1505 Pa. ave.
42 No. 3248. Ad. D. 14. John Selden, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 12th, 1888.

In the case of William L. Naylor, Executor of **Rosa A. Schnier**, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 9th day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
42 No. 2837. A. A. Brooke, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
October 12th, 1888.

In the matter of the Estate of John Sullivan, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Mary Sullivan.

All persons interested are hereby notified to appear in this Court on Friday, the 2nd day of November next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
Test: DORSEY CLAGETT, Register of Wills.
42 No. 3250. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Fischer, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of October, 1888.
LEON TOBRINER, Ex'r, 322 4½ st n w.
42 No. 3214. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
October 5th, 1888.

In the case of Martin F. Morris and Ben Hellen, Executors of Caroline C. Arthur, deceased, the Executors aforesaid have, with the approval of the Court, appointed Friday, the 2d day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution, under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executors will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
41 No. 2854. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of Hamilton County, Ohio, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Martha Wheelock, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 4th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 4th day of October, 1888.
JOSEPH SYKES, Ex'r,
Cleves Miami Township,
Hamilton County, Ohio.
43 No. 3243. Ad. D. 14. E. A. McIntire, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 3d day of October, 1888.

Thomas Gray and Son
vs.
Mary McMahon et al.
No. 11354 Eq. Docket 28.

On motion of the plaintiffs, by Mr. Woodbury Wheeler, their solicitor, it is ordered that the defendant, Joseph P. McMahon, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a decree for the sale of the real estate of the late Daniel McMahon, deceased.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Samuel A. Lee et al.
vs.
Mary A. Foote et al.
No. 10621. Equity Doc. 27.

James S. Edwards and James H. Smith, the trustees appointed herein, having reported that they made sale on the eighth day of the present month of October, of the real estate and premises in this cause decreed to be sold, to wit, the lot two (2), of the subdivision of the square five hundred and sixty (560), particularly described in the said report and proceedings in this cause, to Thomas Kirby, for the sum of sixteen thousand two hundred and fifty dollars ($16,250). It is, this 15th day of October, A. D. 1888, ordered, adjudged and decreed that said sale will be ratified and confirmed, on Thursday, the 15th day of November next, unless cause to the contrary be shown before that day.

Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in the WASHINGTON LAW REPORTER, printed and published in the City of Washington, in the District aforesaid.

CHARLES P. JAMES, Justice.
A true copy. Test: R. J. MEIGS, Clerk.
42 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 4th day of October, 1888.

Elizabeth Pierce, Edward Hayes and Ann Hayes.
vs.
John T. Vinson.
No. 28902. At Law.

On motion of the plaintiff, by Messrs. Worthington & Heald, their attorneys. it is ordered that the defendant, John T. Vinson, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover possession of all of original lot three (3), and of lots eighteen (18), twenty (20), and twenty one (21), of Wiegand's subdivision of certain lots in square five hundred and ninety-six (596), in the City of Washington, District of Columbia, in which lots 3, 18, 20 and 21, the plaintiffs claim an undivided one-fourth interest.

Also to recover one-fourth of the *mesne* profits of said lots 3, 18, 20 and 21 from September 1, 1885.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 4th day of October, 1888.

Americus L. Pogue et al.
vs.
John Woodnut Barcroft.
No. 11350. Equity Docket.

On motion of the plaintiffs, by Birney & Birney, their solicitors, it is ordered that the defendant, John Woodnut Barcroft, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided that a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three weeks before said day.

The object of this proceeding is to have a resulting trust, as to lots 24 and 25, square 117, in the City of Washington, decreed in favor of the complainants against said defendant, and to compel a conveyance thereof.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John Harrington, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October, 1888.
her
MARY ⋈ HARRINGTON, Ex'x,
mark.
42 No. 3240. Ad. D. 14. R. P. Jackson, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th of October, 1888.

Malachi Manahan vs. C. D. Fowler et al. } No. 11358. Eq. Docket 28.

On motion of the plaintiff, by Mr. Wm. Tayloe Snyder, his solicitor, it is ordered that the defendant, **Michael Manahan**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain account, the entire personal estate in the hands of the defendant, Fowler, administrator, and to remove the cloud upon the title to part of lot twenty-two (22), in square two hundred and thirty-eight (238), in Washington City, in said District.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Catharine Freeman**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 6th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 6th day of October, 1888.

J. F. Freeman, Ex'r, 1800 F st n w
42 No. 3242. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Charles G. Thorn et al vs. Allison Nailor et al. } No. 10312. Equity.

James S. Edwards and Henry Wise Garnett, trustees herein, having reported the sale of the real estate and premises in this cause decreed to be sold (subject, however, to the dower right and interest of Marab Thorn, the widow of Henry Thorn, deceased). to the complainant, Charles G. Thorn, for the sum of fourteen thousand two hundred dollars ($14,200), as particularly set forth in said report; it is, this 18th day of October, 1888, ordered, adjudged and decreed that said sale, as reported, be confirmed on the 19th day of November next, unless cause to the contrary be shown before that day.

Provided a copy of this order be published once a week for three successive weeks before said day in the WASHINGTON LAW REPORTER, printed and published in the City of Washington, in the District aforesaid.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
43 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of **Samuel Taylor Suit**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of October, 1888.

ROSA P. SUIT, Ex'x, 228 New Jersey ave n. w.
43 No. 3246. Ad. D. 14. Charles Pelham, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 5th day of October, 1888.

Jeanette R. Lenman vs. Thomas U. Ward. } No. 11359. Eq. Docket 28.

On motion of the plaintiff, by Mr. Jennings, her solicitor, it is ordered that the defendant, **Thomas U. Ward**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to construe decree in Equity Cause 5748, and to enjoin defendant from setting up title to pts. lots 7 and 8, square 399.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 3d day of October, 1888.

David Callahan, by his next friend, Margaret Callahan. vs. Catharine Walsh alias Kate Walsh et al. } No. 11248. Eq. Docket 28.

On motion of the plaintiff, by Messrs. Carusi & Miller, his solicitors, it is ordered that the defendants, **Catharine Walsh alias Kate Walsh** and **Mary Connery**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have certain real estate described in said cause which was conveyed by Mary E. Fitch to Bridget Callahan (wife of plaintiff), who departed this life on 27th August, 1888, declared to be held by the defendants to the use and benefit of plaintiff; and further, that defendants be decreed to convey said real estate to plaintiff, his heirs and assigns.

By the Court. CHARLES P. JAMES, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
41 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

October 12th, 1888.

In the matter of the Estate of **Anastasia Patten**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased having been made by Mary E. Patten, Josephine A. Patten, Edith Patten and Helen Patten:

All persons interested are hereby notified to appear in this Court on or before Friday, the 14th day of December next at the opening of the Court on that day, to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. CHARLES P. JAMES, Justice.
Test: DORSEY CLAGETT, Register of Wills.
42 No. 3234. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 8th day of October, 1888.

George Breitbarth vs. William Young. } No. 28762. Docket 33.

On motion of the plaintiff, by Mr. Thomas M. Fields, his attorney, it is ordered that the defendant, **William Young**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to collect a furniture bill of $93.75 and costs; and to have condemnation of property of the defendant, Young, attached, in the hands of Jacob Albrecht, for this purchase.

By the Court. A. B. HAGNER, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
43 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Furmann J. Shadd, Guardian, vs. Howard Holmes et al. } Equity No. 11049.

James H. Smith, trustee, having reported to this Court that he has sold lot lettered "H," in Wright and Cox subdivision of a part of Mount Pleasant or Pleasant Plains, to Milton M. Holland, for $1,300 cash, and lot numbered two hundred and eight (208), of Maria Roberts' subdivision of lot numbered 74 of Haws' subdivision of Mount Pleasant, to Michael P. Sullivan, for $230 cash, both properties in the District of Columbia, and that said purchasers have complied with terms of sale. It is, by the Court, this 20th day of October, A. D. 1888, ordered that the said sales be ratified and confirmed, unless cause thereof to the contrary be shown on or before the 3d day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-named day.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk, &c.
43 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Henry E. Scott**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 13th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 13th day of October, 1888.

ALBERT F. FOX,
NOBLE D. LARNER,
Executors.

43 No. 3220. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 19th day of October, 1888.

Alice V. Weeden vs. **Charles E. Beall et al.** } No. 11090. Eq. Docket 28.

On motion of Morris & Hamilton, solicitors for complainant, it is, this 19th day of October, A. D. 1888, ordered that the defendants, **Charles E. Beall** and **Eugene Beall**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a judicial construction of the will of Beverly W. Beall, late of Washington, D. C., deceased.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
43 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 10th day of September, 1888.

Lillian S. Benton vs. **Henry Benton.** } No. 11285. Docket.

On motion of the plaintiff, by Mr. Frank T. Browning, her solicitor, it is ordered that the defendant, **Henry Benton**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce, instituted by the plaintiff, Lillian S. Benton, against the defendant, Henry Benton, on the grounds of desertion of the plaintiff by the defendant for the uninterrupted space of more [than] two years.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
43 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Michael V. Sheridan vs. **Catherine M. Kennedy et al.** } No. 11355. Eq. Docket 28.

Ordered this 20th day of October, A. D. 1888, that the defendants, **Guy R. Kennedy, Joseph J. Kennedy, Cora W. Kennedy, Annie E. Bidwell** and **John Bidwell**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to have a trustee substituted in the of Joseph C. G. Kennedy, deceased, to release the property described in the bill from the deed of trust thereon given by the defendant, Susan P. Okie, the indebtedness secured by said deed having been fully paid.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
43 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding an Equity Court for said District.

Grant et al. vs. **Grant et al.** } Equity No. 11306.

It is, this 22d day of October, A. D. 1888, ordered, by the Court, that the sale made and reported by the trustees in this cause, be ratified and confirmed, unless cause to the contrary be shown on or before November 25th, A. D. 1888, next.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once in each of three successive weeks before said day.

(Signed) W. S. COX.

43 Mason N. Richardson, Solicitor.

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Digest of Laws of U. S., Brightly, 1789 to 1857, 1857 to 1865, 1857 to 1869, Duplicate, 1868 to 1870.
Dorsey's Laws of Maryland, vols. 1, 2, 3, 1840.

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Foster on Scire Facias, 1857.
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Hartley's Digest, vols. 1, 2, 3.
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Irish Reports, vols. 1, 2, 1867-8.
Irish Reports, Equity series, vol. II, 1868.

Journal of the Law (Phila.), 1830.
Jurisprudence of Medicine, Ordronaux, 1869.

Landlord and Tenant (Sloane), 1878.
Laws 1859-60.
Law Reports (English), vols. 1 to 16, inclusive, 1867-69.
Law of Nations, Vattel.
Legal Maxims (Morgan).
Leading Criminal Cases, Bennet & Heard. 2d Ed.
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Louisiana, 1 to 10 Martin.
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Treatise on Insanity, Prichard.

U. S. Stats. at Large, vols. 1, 2, 3.
U. S. Stats. at Large, 1861 to 1863, and 1863 to 1867 2 vols., G. P. Sanger.
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ESTABLISHED 1874.

EDWARD S. MCCALMONT, *Editor.*

VOL. XVI. - - - - - - - No. 45

WASHINGTON, D. C. - - NOVEMBER 7, 1888

Misrepresentation in Company's Prospectus.

"There are two classes of mercantile men. There are those who have lax notions of the duty of taking care to be accurate, and those who are scrupulously careful to observe this duty; and it is the opinion of the latter class to which I attach most importance," observed Sir James Hannen, in the recent case of Peek *vs.* Derry. That most important decision of the Court of Appeal, to which our attention is attracted by the report in the *Law Times* of the 15th ult., unquestionably falls nothing short of what the strictest purist could demand in mercantile morality, and indeed leaves a doubt open whether even the "scrupulously careful" class itself would not deem the principles enforced rather too straight-laced to sanction by attaching legal liability to their infringement. The question arose in a suit brought in the form of common law action commonly called an action of deceit, the enlarged scope of which the case eminently demonstrates. As to the law generally with reference to such actions, and when it is that a defendant in such an action will be held liable, "Mr. Pollock in his valuable work on Torts" (the complimentary words of Sir James Hannen) has furnished an amply able commentary. In the present case the doctrine to be deduced from the anterior authorities was thus formulated by Cotton, L. J.: "In my opinion, the law may be correctly stated as follows: that where a man makes a statement, to be acted upon by others, which is false and which is known by him to be false, or is made by him recklessly or without caring whether it is true or false—that is, without any reasonable ground for believing it to be true—he is liable in an action of deceit at the suit of any one to whom it was addressed, or of any one of the class to whom it was addressed, and who was materially induced by the misstatement to do an act to his prejudice." While it was thus put by Lopes, L. J.: "I think the result of the cases amount to this: If a person makes to another a material and definite statement of fact which is false, intending that person to rely upon it, and he does rely upon it, and is thereby damaged, then the person making the statement is liable to make compensation to the person to whom it is made, first, if it is false to the knowledge of the person making it; secondly, if it is untrue in fact and not believed to be true by the person making it; thirdly, if it is untrue in fact, and is made recklessly, for instance, without any knowledge on the subject, and without taking the trouble to ascertain if it is true or false; fourthly, if it is untrue in fact, but believed to be true, but without any reasonable ground for such belief."

But now, let the facts be stated to which those principles were to be applied—as applied they were in favor of the defendants by Stirling, J., in the Court below, and in favor of the plaintiff by Cotton, L. J., Sir J. Hannen and Lopes, L. J., in the Court of Appeal. The directors of a tramway company issued a prospectus stating in the heading that it was "Incorporated by special act of Parliament, 45 & 46 Vict., authorizing the use of steam or other mechanical motive power," and subsequently that "One great feature of this undertaking, to which considerable importance should be attached, is that by special Act of Parliament obtained, this company has the right to use steam or mechanical motive power instead of horses, and it is fully expected that by means of this a considerable saving will result in the working expenses of the line as compared with other tramways worked by horses." This statement formed a material inducement, though not the only motive, influencing Sir Henry Peek to become a shareholder. But, while every one is supposed to know the law, had he acquainted himself with the terms of the statute expressly referred to by the directors, he would have learned that the right thereby given to use steam was a right subject to a condition: the consent of the Board of Trade should be obtained. And, even had he learned that fact, it seems by no means clear that he would have altered his course. He did not state that, had he known the contents of the act, he would not have applied for the shares; he said that if the clause had been recited *in extenso* he would not have read it. But, as a matter of fact, the consent of the Board of Trade had not been obtained. The limitation to the right of using steam had not been removed. But had the directors been told that, this being so, the paragraph relating to the use of steam was unwarranted, they would have answered in all probability, "It is true you may be right, as a matter of law; but, as a matter of business, we say the statement is perfectly correct. Tramway companies are of two classes—those which can only use horse power, and those which can also use steam power; and the prospectus means that this company belongs to the latter class which is freed from the restrictions of the general Act of 1870 as to the use of steam power. Parliament has adjudicated on the subject, and has granted us the right to use steam power, under the ordinary and well known condition that the Board of Trade is to consent on our line being properly constructed with due regard to the public safety. We have referred to the special Act, which is openly lying in our office for inspection. The plans of the tramway have been approved by the Board of Trade, so that they have practically given their consent already. Their actual consent will be given in due course. We believe that honestly—no one disputes the honesty of our belief. Our right, which is a right though conditional, will then be absolute. Your maxim of equity has it that what ought to be done should be deemed to have been done, and it is absurd to tell us, as practical business men, that our statement is fraudulent. And what says even a pundit of the law, Lord Bramwell, in Weir *vs.* Bell (3 Ex. D., 238): 'I am of the opinion, with an exception I will presently advert to, that to make a man liable for a fraud, moral

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fraud must be proved against him. I do not understand legal fraud. To my mind it has no more meaning than legal heat or legal cold, legal light or legal shade. There never can be a well founded complaint of legal fraud, or of anything else, except where some duty is shown and correlative right, and some violation of that duty and right.' And again, does not Lord Justice Bowen expressly say, in Edington *vs.* Fitzmaurice (29 Ch. D., 459): 'In an action of deceit the plaintiff must prove dishonesty.'" The company was subsequently wound up—the collapse not being in any way caused by the want of a right to use steam power, which right had in fact been sanctioned by the Board of Trade in reference to a portion of the line, after the prospectus was issued. The plaintiff then claimed damages for fraudulent representations; and Sterling, J., deciding in favor of the defendants, said: "In my judgment, having seen the directors, and come to the conclusion that they did, every one of them, believe that they had the right stated in the prospectus, am I to say that their belief was so unreasonable and so unfounded, and their proceedings so reckless or careless, that they ought to be fixed with the consequences of deceit? In my judgment, I think not. Mercantile men dealing with matters of business would be the first to cry out if I extended the notion of deceit into what is honestly done in the belief that these things would come about, and when they did not come about make them liable in an action of fraud. I cannot, therefore, under these circumstances, come to the conclusion that this was fraudulent in any sense which would render these defendants liable to an action for deceit."

The Court of Appeal unanimously reversed the decision of Mr. Justice Stirling, and held the defendants liable. "It is not," said Cotton, L. J., "that I attribute to them any intention to commit fraud, but they have made a statement which was incorrect to induce the plaintiff to act upon it without any sufficient reason for making that statement, without any sufficient reason for believing it to be true. Therefore they are liable." "The expression 'legal fraud,'" said Sir James Hannen, "which has been in constant use by judges for very many years, is, to say the least, an exceedingly convenient expression; that is to say, it is an expression which very clearly conveys an idea which is the object of language, and it appears to me to mean this: that degree of moral culpability in the statement of an untruth to induce another to alter his position to which the law attaches responsibility. And that is, as I think, where a man makes an untrue statement for the purpose mentioned without reasonable cause for believing it to be true. No doubt the word fraud is in common parlance reserved for actions of great turpitude, but the law applies it to lesser breaches of moral duty; and it appears to me that the making of any statement upon which others are intended to act, without reasonable ground for stating it, and without reasonable ground for believing it to be true, is a breach of moral duty, though it may not be one of such dark complexion as to blast the character of the man forever who does it. It is not necessary that there should be that amount of wrong in order to give a legal remedy." Legal fraud in this sense the defendants were guilty of, in the opinion of the Court, because, as Lopes, L. J., put it: "A reader of ordinary intelligence would understand that in that prospectus was contained a definite assertion of a then existing fact, that is, a right to use steam power. I cannot think that any reader of ordinary intelligence reading those passages would come to the conclusion that it meant only an assertion of what I will call a violent probability that a consent to use steam power would be obtained." A very little alteration indeed in the statement would have made it literally true in fact; but, in the absence of the words "subject to the consent of the Board of Trade," it was not rigidly correct. And though the defendants may well stand aghast, as Mr. Justice Stirling conceived, at such strict law, it is at all events in conformity with strict morality; and assuredly, it would lead to very dangerous consequences if, in the words of Sir James Hannen, "persons in the position of the defendants would be at liberty to deceive others to the extent that they could succeed in deceiving themselves."—*Irish Law Times.*

---

1. IN AN action to lower a dam and enjoin defendant from setting back-water upon complainant's lands, it appeared that a dam had been built on the same site in 1843, and being carried away in 1875, was replaced by the present dam; that flash-boards from twelve to eighteen inches high were used on the old dam at certain seasons, and on the new until 1881, when the dam was tightened and raised twelve inches, so as to do away with flash-boards; that prior to that time complainant's had cultivated their lands without trouble from flood or overflow; and that since 1881 the water had been set back upon their lands, averaging a foot higher than theretofore, destroying crops and preventing cultivation; *Held*, that the measure of the right to set back-water by a dam when acquired by prescription is the height to which it has actually been set back, and not the height to which it might have been set back if the dam had been tight, and that defendants had acquired no right so to flood complainant's lands.

2. Several landowners may join in a suit to lower a dam, and to obtain an injunction against flooding their lands, where no accounting is asked.—Turner *vs.* Hart, Supreme Court of Michigan, July 11, 1888.

WHEN an advance is made on a verbal agreement that goods shall be pledged and the goods are subsequently transferred according to the agreement, it is immaterial as between the parties that there is a considerable interval between the loan and the delivery of possession.

Where goods are pledged and delivered to the pledgee, a document explaining the transaction and stating what are the rights of the pledgee is not a bill of sale within the acts. But a document which gives a license to take immediate possession of goods as a security for a debt is a bill of sale within the acts, although it cannot be framed according to the scheduled form; and it is void as not being in the prescribed form. Hilton *vs.* Tucker, English Chan. Div., June 10, 1888.

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SUPREME COURT OF THE UNITED STATES.

EDWARD KANE, *Plaintiff in Error.*
vs.
NORTHERN CENTRAL RAILWAY COMPANY.

In error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

October 22, 1888.

An employee is guilty of contributory negligence which will defeat his right to recover for injuries received in the course of his employment, where such injuries substantially resulted from dangers so obvious and threatening that a reasonable, prudent man, under similar circumstances, would have avoided them if in his power to do so. But in determining whether an employee has recklessly exposed himself to peril, or failed to exercise the care for his personal safety that might reasonably be expected, regard must always be had to the exigencies of his position, indeed, to all the circumstances of the particular occasion.

Whether there was contributory negligence sufficient to defeat the plaintiff's right to recover is for the jury when they may reasonably infer from the evidence that he was exercising ordinary prudence in his calling under the circumstances in which he was placed.

MR. JUSTICE HARLAN delivered the opinion of the Court.

This is an action to recover damages for personal injuries sustained by the plaintiff while in the discharge of his duties as an employee of the Northern Central Railway Company. It is based upon the alleged negligence of the company in not providing suitable and safe appliances for the cars on which the plaintiff was assigned to duty. At the conclusion of the evidence introduced in his behalf the Court directed a verdict for the company.

It was in evidence that at midnight, in the month of February, a train of freight cars, belonging to or being operated by the defendant, left Marysville, on its line of road, for the City of Baltimore. The rear car was the caboose; the third car from the caboose was an ordinary "house-car;" the fourth one was laden with lumber. The car upon which the plaintiff was required to take position while the train was in motion was about the eighth or tenth one from the caboose. His principal duty was to "brake" the train from that car back to the caboose. When the train, moving southward, was going into York Haven, twenty miles from Marysville, the plaintiff, while passing over it for the purpose of putting down the brakes, discovered that the third car from the caboose had one step off at the end nearest the engine, and immediately called the attention of the conductor to the fact. The conductor promised to drop that car at the coal yard or junction beyond them in the direction of Baltimore, if, upon looking at his manifests, he found that it did not contain perishable freight. When the train stopped, about four or five o'clock in the morning at Coldfelters, some miles north of the coal yard or junction, the plaintiff went to the caboose to eat his breakfast and warm himself. It was snowing, freezing and sleeting. One of the witnesses testified that "it was a fearful cold night, raining and sleeting; the train was covered with ice and snow; * * * it was most bitter cold; the rain was freezing as it fell; a regular winter's storm." While the plaintiff was in the caboose eating his breakfast the train moved off. He immediately started for his post, leaving behind his coat and gloves. Upon reaching the south end of the third car from the caboose he attempted to let himself down from it in order to reach the next car ahead of him, which was the lumber car, and pass over the latter to the one on which he usually stood while the train was in motion. At the moment he let himself down from the top of the house-car he forgot that one of its steps was missing; and, before realizing the danger of his position, and without being able then to lift himself back to the top of the car, he fell below upon the railroad track and between the wheels of the moving train, causing him to lose both legs. The plaintiff testified that if, at the moment of letting himself down from the top of the car, he had recalled the fact that one of its steps was gone, he might have pulled himself back with his hands, or have "slid down" on the brake rod; for he had before climbed up and down by holding that rod with one hand and putting his foot against it and pulling himself up until he touched the running board. He testified that he could not remember how his mind was occupied at the time; "only going to my post, my mind was on that; going where I had the right to be." Again: "When the accident happened, I was going to my place on the train. I had no other duty on the top of the cars as the train was moving off, unless the engineer calls for a signal, and generally he does do that when the train is moving off. There is occasion for it in all places where the train starts or stops, only in cities, where we aren't allowed to blow them. We are required to notice the train when it is running to see that it is all going; the train might start and go one hundred yards and then break loose."

This was, in substance, the case made by the plaintiff's evidence.

The Circuit Court proceeded upon the ground that contributory negligence upon the part of the plaintiff was so conclusively established that it would have been compelled, in the exercise of a sound judicial discretion, to set aside any verdict returned in his favor. If the evidence, giving the plaintiff the benefit of every inference to be fairly drawn from it, sustained this view, then the direction to find for the defendant was proper. Phœnix Insurance *vs.* Doster, 106 U. S., 30, 32; Randall *vs.* Baltimore & Ohio R. R. Co., 109 U. S., 478, 482; Anderson County *vs.* Beal, 113 U. S., 227, 241; Goodlet *vs.* Louisville & Nashville R. R., 122 U. S., 391, 411.

But we are of opinion that the question of contributory negligence should have been submitted to the jury. It cannot be said that the plaintiff was guilty of contributory negligence in staying upon the train in the capacity of brakeman, after observing that a step was missing from one of the cars over which he might pass while discharging his duties. An employee upon a railroad train, likely to meet other trains, owes it to the public, as well as to his employer, not to abandon his post unnecessarily. Besides, the danger arising from the defective car was not so imminent as to subject him to the charge of recklessness in remaining at his post under the conductor's assurance that the car should be re-

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moved from the train when it reached the coal yard or junction, if, upon examining his manifests, he found that it did not contain perishable freight. Hough *vs.* Railroad Co., 100 U. S., 224; District of Columbia *vs.* McElligott, 117 U. S., 621, 631.

But it is said that the efficient, proximate cause of the injury to the plaintiff was his use of the defective appliances at the end of the car from which he fell, when he knew, and, at the moment of letting himself down from that car, should not have forgotten, as he said he did, that one of its steps was missing. It is undoubtedly the law that an employee is guilty of contributory negligence, which will defeat his right to recover for injuries sustained in the course of his employment, where such injuries substantially resulted from dangers so obvious and threatening that a reasonably prudent man, under similar circumstances, would have avoided them if in his power to do so. He will be deemed, in such case, to have assumed the risks involved in such heedless exposure of himself to danger. Hough *vs.* The Railroad Co., District of Columbia *vs.* McElligott, and Goodlet *vs.* Louisville & Nashville R. R., above cited; Northern Pacific R. R. Co. *vs.* Herbert, 116 U. S., 642. But in determining whether an employee has recklessly exposed himself to peril, or failed to exercise the care for his personal safety that might reasonably be expected, regard must always be had to the exigencies of his position, indeed, to all the circumstances of the particular occasion. In the case before us the jury may, not unreasonably, have inferred from the evidence, that while the plaintiff was passing along the tops of the cars, for the purpose of reaching his post, he was so blinded or confused by the darkness, snow and rain, or so affected by the severe cold, that he failed to observe, in time to protect himself, that the car from which he attempted to let himself down was the identical one which, during the previous part of the night, he had discovered to be without its full complement of steps. While a proper regard for his own personal safety, and his duty to his employer, required that he should bear in mind, while passing over the cars to his station, that one of them was defective in its appointments, it was also his duty to reach his post at the earliest practicable moment; for not only might the safety of the moving train have depended upon the brakemen being at their posts, but the engineer was entitled to know, as the train moved off, by signals from the brakemen, if necessary, that none of the cars constituting the train had become detached. If it be suggested that the plaintiff ought not to have left his post and gone to the caboose when the train stopped at Coldfelters, the answer, furnished by the proof, is, that he was justified in so doing, by usage and by the extraordinary severity of the weather. And if his going back from the caboose was characterized by such haste as interfered with a critical examination of the cars as he passed over them, that may, in some measure at least, have been due to the fact that the first notice he had of the necessity of immediately returning to his post was that the train was moving off.

Without further discussion of the evidence, and without intimating any opinion as to what ought to be the verdict upon the issue of contributory negligence, we are of the opinion that the Court erred in not submitting to the jury to determine whether the plaintiff in forgetting, or not recalling, at the precise moment, the fact that the car from which he attempted to let himself down was the one from which a step was missing, was in the exercise of the degree of care and caution which was incumbent upon a man of ordinary prudence in the same calling, and under the circumstances in which he was placed. If he was, then he was not guilty of contributory negligence that would defeat his right of recovery.

Judgment is reversed and the case remanded, with directions to grant a new trial.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY, *Plaintiff in Error,*

vs.

THE STATE OF ALABAMA.

In error to the Supreme Court of the State of Alabama.

ABSTRACT.

October 22, 1838.

A statute of Alabama which took effect on the first of June, 1887, "for the protection of the traveling public against accidents caused by color blindness and defective vision," declares that all persons afflicted with color blindness and loss of visual power to the extent therein defined, are "disqualified from serving on railroad lines within the State in the capacity of locomotive engineer, fireman, train conductor, brakeman, station agent, switchman, flagman, gate tender, or signal man, or in any other position which requires the use or discrimination of form or color signals," and makes it a misdemeanor, punishable by fine of not less than ten nor more than fifty dollars for each offense, for a person to serve in any of the capacities mentioned without having obtained a certificate of fitness for his position in accordance with the provisions of the act. It provides for the appointment by the Governor of a suitable number of qualified medical men throughout the State to carry the law into effect; and for the examination by them of persons to be employed in any of the capacities mentioned; prescribes rules to govern the action of the examiners, and allows them a fee of three dollars for the examination of each person. It declares that re-examinations shall be made once in every five years, and whenever sickness, or fever, or accidents calculated to affect the visual organs have occurred to the parties, or a majority of the board may direct; that the examinations and re-examinations shall be made at the expense of the railroad companies; and that it shall be a misdemeanor, punishable by a fine of not less than fifty nor more than five hundred dollars for each offense, for any such company to employ a person in any of the capacities mentioned, who does not possess a certificate of fitness therefor from the examiners in so far as color blindness and the visual organs are concerned.

The defendant, The Nashville, Chattanooga and St. Louis Railway Company, is a corpora-

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tion created under the laws of Tennessee, and runs its trains from Nashville in that State to various points in other States, twenty-four miles of its line being in Alabama, two miles in Georgia, seven in Kentucky, and four hundred and sixty-four in Tennessee.

On the second of August, 1887, one James Moore was employed by the company as a train conductor on its road, and acted in that capacity, in the county of Jackson, in Alabama, without having obtajned a certificate of his fitness so far as color blindness and visual powers were concerned, in accordance with the law of that State. For this employment the company was indicted in the Circuit Court of the State for Jackson County, under the statute mentioned, and on its plea of not guilty was convicted, and fined fifty dollars. On appeal to the Supreme Court of the State the judgment was affirmed, and to review it the case is brought on error to this Court.

Held, That the statute is not repugnant to the power vested in Congress to regulate commerce among the States; Smith *vs.* Alabama, 124 U. S., 465; that it is not repugnant to the provision of Article III of the Constitution, which declares that the trial of all crimes shall be held in the State where they have been committed because such provision has reference only to trials in the Federal Courts; that it does not deprive railroad companies of property without due process of law within the inhibition of the Fourteenth Amendment, but merely imposes upon them the expenses necessary to ascertain whether their employees possess the physical qualifications required by law; and that, therefore, said statute is valid.

Opinion by MR. JUSTICE FIELD.

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1. A LICENSE tax on the occupation of doing business is a tax on the business.

2. Communication by telegraph, if carried on between different States, is commerce between the several States, and directly within the power of regulation conferred upon Congress, and free from the control of State regulations, except such as are strictly of a police character.

3. The Act of Congress of July 24, 1866, about telegraph companies, is a legitimate regulation of commercial intercourse among the States, and, after a company has accepted the provisions of that act, State laws are unconstitutional which impose a tax on messages sent in the service of the Government, or sent by any persons from one State to another.

4. No State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on. Leloup *vs.* Port of Mobile, U. S. Sup. Ct., May 14, 1888.

THE Legislature may compel the seller of intoxicating liquors to expose the interior of his building where sales are made, at all times when the law forbids such sales; and such provision does not conflict with the State and Federal constitutional provisions as to property rights. Robinson *vs.* Haug (Mich.), 14 West. Rep., 876.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

HENRY K. WILLARD
vs.
JOSEPH C. WILLARD.

EQUITY. No. 10,945.

The CHIEF JUSTICE, JUSTICES COX, JAMES and MERRICK sitting.

Decided October 22, 1888.

Partition is a matter of right between joint-tenants or tenants in common of real estate, and no demand is necessary before the bringing of a suit for that purpose.

The case is sufficiently stated in the opinion.

MESSRS. MORRIS and HAMILTON, for complainant.

MR. WM. F. MATTINGLY, for defendant.

MR. JUSTICE MERRICK delivered the opinion of the Court.

This was a suit instituted for partition under the act of 1876.

It is conceded that if the Court can rightfully exercise the jurisdiction, there is no doubt that partition is not so good a remedy as a sale, because, from the nature of the property, it would yield a larger sum upon a sale than it would yield by partition, it being shown to be a large property peculiarly adapted to hotel purposes, and so advantageously situated that it would, in all reasonable probability, in the judgment of men competent to judge in regard to those subjects, bring a much larger price if sold as a whole than it could possible bring if it were divided into parts or distributed into different lots between the two proprietors.

There is a lease upon the property, which is to expire within the next two or three months. The existence of that lease, according to the testimony in the cause, does not present any impediment at all to the procurement of the full price of the property, as the time of the expiration of the lease is so near that it is an element that can hardly be appreciated in determining whether or not the property should be sold before or after the lease shall have expired, so that there is no impediment on that ground.

The chief objection, which was named by the defendant in the cause, as to the granting of relief, either by partition or by sale, was that there had been no previous demand by the party therefor.

We are not at all aware that there is anything in the law which requires a demand upon the party before the institution of the suit; and in a case like this, where the defendant by his answer resists the partition or the sale and demands that the thing shall remain *in statu quo*, it is apparent that it would have been an idle ceremony if there had been a previous formal demand for the partition.

Partition is of right, and like most other cases where parties resort to a suit, the fact of resorting to the suit is demand enough, which might have been complied with on the instant if the party had pleased and thereby suspended the necessity for further action by the courts. Par-

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tition, as we all know, has been a matter of absolute right between joint tenants and tenants in common, as it was between parceners, previous to the passage of the statute of Henry VIII. No man has a right to refuse it, and no court can withhold an affirmative response to a demand for partition. But the partition had to be in kind, and the Court in Chancery could exercise no jurisdiction for the purpose of granting equivalents in the way of sale. They had to make partition at any cost and at any hazard, and, as one of the old chancellors said, if it was insisted upon, they would make partition even if they, with an axe, cut a chimney down in order to divide the property between the parties So absolute was the right.

In view, therefore, of the absolute right of partition, and the great danger of loss to one or more of the parties by a refusal to enter into any proceedings for a sale, the act of 1876, very late as compared with legislation everywhere else, made provision for a sale where it would be to the advantage of the parties that partition should be made in that mode. But it did not at all restrict the previous absolute right of partition.

In this case, as I have said, there seems to have been at the argument no serious objection made other than the fact that there had been no demand before the bill was filed. We do not think there is necessity for anything of the sort; and seeing upon the face of the bill an equity which has been fully and conclusively proved, to have a sale in lieu of partition, (and I believe counsel for the defendant himself admitted at bar, that if the jurisdiction of the Court were to be exerted at all it would be more advantageous to decree a sale than to have partition in kind) we feel no hesitation whatever in affirming the decree below.

UNITED STATES *vs.* ALBERT GREEN.

No. 16,810. CRIMINAL DOCKET.

The CHIEF JUSTICE, JUSTICES COX, JAMES and MERRICK sitting.

Decided October 22, 1888.

1. Where a motion for a new trial in a capital case is certified to the General Term for hearing in the first instance and the testimony is not sent up with the motion, the Court not being able to say how far the jury were influenced by it will, *in favorem vitiæ*, presume that they were perhaps misled by an erroneous portion of the charge although other portions of the charge correctly announced the law of the case.
2. In such a case, the verdict being one of murder a new trial will be granted, where a portion of the charge seems to dwell with undue emphasis upon the effect of the use of a dangerous weapon, and fails altogether to give any consideration to the passion which may have been engendered by the previous conflict between the accused and the deceased.

The case is stated in the opinion.

MR. JOHN BLAIR HOGE, for the United States.

MR. R. B. LEWIS, for defendant.

Mr. Justice MERRICK delivered the opinion of the Court:

This is a motion for a new trial in the Criminal Court, certified by the justice to be heard here in the first instance upon alleged errors in the charge of the Court.

The testimony has not been sent up with the motion, and the only means we have of getting at its character is from the summary of the testimony given by the judge to the jury and recited in the charge itself. Under circumstances of this sort it is difficult to say how far a jury may or may not have been misled by one part of the charge when another part of the charge is correct, since we have not the whole of the testimony before us and cannot say in what manner it influenced the minds of the jury.

In addition to that, the verdict found the accused guilty of murder; so, that the life of a fellow-being is involved, and it will not do under such circumstances for an appellate court to speculate as to whether or not the Court who tried the cause may or may not have misled the jury in any part of his instructions and charge. Under such circumstances, if it appear that there has been an erroneous instruction in any of the rulings given by the Court to the jury it would seem, out of tenderness to human life and the great regard which the law has to the most scrupulous administration of justice, and nothing more than justice in such cases, that the question should be remanded for a second trial, and the Court above should not speculate at all upon the possibility of the jury having been misled. It is its duty to infer that perhaps the jury may have been misled. The trial involving the life of a fellow-being should be above all exception.

In this case the justice at the trial certainly in many respects did lay down the rule properly, correctly, exactly, discriminating between the law of homicide and manslaughter, and the law of self-defense, and distinguishing in many parts of the charge what provocation would or would not reduce a case from the crime of murder, as averred, to the crime of manslaughter, as proved. Notwithstanding this, in a part of his charge he gave an instruction to them with very manifest emphasis, according to the terms of the instruction, which omitted several very essential elements of the definition which he elsewhere gave to the jury. I refer to that part of the charge which is in these words:

"And lastly, gentlemen, upon this subject I think it my duty to say to you that, even if Lucas began the controversy [Lucas was the name of the deceased], it was the duty of the defendant, Green, to do all he could reasonably to avoid and get out of the way of Lucas, by retreating, or otherwise, before he could justify himself in using a dangerous weapon even to protect himself; and if he did not do what he reasonably could, by retreating, or otherwise, to get out of the way, but used the weapon which you shall find from the evidence to be a dangerous weapon — that is entirely for you—intending to take life or to inflict upon Mr. Lucas serious bodily harm, then he is guilty of murder."

That part of the instruction seems to dwell with undue emphasis upon the effect of the use of a dangerous weapon, and ignores altogether the question of the heat of blood that may have been excited by the previous assault and conflict, as well as the question of the cooling time that may or may not have intervened

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after the assault and before the use of a deadly weapon. It confounds entirely the broad distinction between manslaughter and murder, although a deadly weapon may have been used, where there has been an antecedent assault on the part of the deceased tending to arouse human passion beyond the control which the law requires to be exercised over our bad impulses. Manifestly, then, that part of the charge was erroneous, and it tended—it must have had a tendency—to aggravate in the minds of the jury, the judgment which they rendered upon the facts of the case, giving undue prominence to the use of the lethal weapon, and dwarfing altogether the consideration of the allowance which might have been made for passion engendered in the mind of the defendant in the conflict between the parties preceding that fatal act on his part.

For these reasons the case will be certified back to the criminal court with instructions to award a new trial.

NEW YORK COURT OF APPEALS.

MERRITT C. HERRINGTON, PLAINTIFF,
vs.
VILLAGE OF LANSINGBURGH, DEFENDANT.

Decided June, 1888.

Plaintiff was injured by his horses, while attempting to control them, when they were frightened by a blast fired by contractors who were building a sewer under the authority of a municipal corporation, the defendant. *Held*, That as the contractors had entire control of the work, and as it was their carelessness which caused the injury, defendant was not liable to plaintiff.

Appeal from a judgment of the General Term in the Third Department.

EARL, J.—The defendant is a municipal corporation, and by its charter is clothed with power to cause the construction of sewers. On the 23d day of October, 1878, it made and entered into a contract in writing with Broderick & Ellis for the construction of a sewer in and through one of its streets called State Street. The specifications for the work provided that all damage arising from blasting to be done in the construction of the sewer should be paid for by the contractors. State Street crossed Market Street at right angles. On the 7th day of December, 1878, the plaintiff came into the village with a team and tied his horses to a post in Market Street, about fifteen feet from State Street, in front of a grocery, and went into the grocery, and while there the contractors fired a blast in State Street which frightened the team. The plaintiff rushed from the grocery, and while attempting to control the team was severely injured. The place where the blast was fired was about 200 feet from Market Street, and the team, where it was fastened in Market Street, was not visible from the place of blasting. The claim of the plaintiff is that the defendant is responsible to him for the injury he sustained in consequence of the frightening of the horses by the blast. At the place where the horses were fastened the street was in perfect condition, and the horses did not become restless or frightened from anything existing in the street, and the accident was in no way caused by any imperfect condition of the street, but simply by noise resulting from the blast.

If there was any culpable carelessness which caused the injury to the plaintiff, it was that of the contractors. They had entire control of the work and the manner of its performance. They could choose their own time for firing the blasts, and select their own agents and instrumentality.

The could make the charges of powder large or small, and they could in some degree smother the blasts, so as to prevent falling rocks and much of the noise of the explosion, or they could carelessly omit all precautions, and for the consequences of their negligence they alone would be responsible. If it was a prudent thing to notify persons in the vicinity of the blast before it was fired, then the contractors should have given the notice; but the duty to give it did not devolve upon the village. And for these conclusions the cases of Pack *vs.* Mayor, &c., 8 N. Y., 222; Kelley *vs.* Mayor, &c., 11 N. Y., 432; and McCafferty *vs.* Spuyten Duyvil & Port Morris R. R. Co., 61 N. Y., 178, are ample authority. It is conceded by the learned counsel for the appellant that if the plaintiff had been hit by a fragment of rock thrown by the blast the defendant would not have been, and the contractors alone would have been, responsible. So, too, if a fragment of rock had struck one of the horses, or had fallen or passed near them, and thus had frightensd them, causing the injury to the plaintiff, within the authorities cited the defendant would not have been responsible, and for precisely the same reason no responsibility rests upon it because the team was frightened by the noise of the explosion. A rule which would cast responsibility upon the defendant for injuries resulting from the noise of the explosion, and exempt it from responsibility for injuries caused by fragments of rock thrown by the explosion, would rest upon no rational basis, and require distinctions too fine for the practical administration of justice. The judgment should be affirmed, with costs.

All concur, except Ruger, C. J., not voting, and Danforth, J., dissenting.

Unprofessional Conduct of Physicians.

In a recent case an action was brought by the People of Illinois, &c., *vs.* McCoy, 17 No. East Rep., 786, to recover the statutory penalty for practicing medicine without the certificate of the State Board of Health. The case is instructive upon the question of physicians' advertisements.

The Court said: "It is conceded defendant has a certificate, issued to him by the State Board of Health, under which it was lawful for him to practice medicine in this State. But it is contended that the certificate has been legally revoked by the State Board of Health, under power conferred upon that Board by the tenth section of the Act of May 29, 1877, to regulate the practice of medicine in the State of Illinois, and that since such revocation it is unlawful for defendant to practice medicine in this State. As has been seen, the Court before whom the cause was tried found the 'issues for defendant.' The

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Court held that under the 'law and the evidence' the judgment should be for defendant. There is one view that may be taken, aside from all other questions discussed, that leads to an affirmance of the judgment. It may be conceded that under the tenth section of the Act of 1877, to regulate the practice of medicine in this State, the State Board of Health had power to revoke certificates issued to individuals to practice medicine for the same reasons it might refuse to issue such certificates, viz., for 'unprofessional or dishonorable conduct.' The statute in this respect, however, must have a reasonable construction. The Board cannot from mere caprice, or without cause, revoke a certificate fairly issued upon sufficient evidence of the applicant's qualifications. The right of the citizen to practice his profession, for which he has expended time and money to qualify himself, is too important to be taken away from him without some reasonable cause. It must be for some act or conduct that would in the common judgment be deemed 'unprofessional' or 'dishonorable.' There is no evidence in this record that shows or tends to show defendant was not a reputable physician; nor does it appear the State Board of Health, from any evidence submitted to it or otherwise, ever found defendant had been guilty of any act or conduct that was unprofessional or dishonorable.

"It is recited in the minutes of the Board in evidence that charges had been preferred against defendant. The spacific charge was that defendant had made 'statements and promises with reference to the treatment and cure of the sick and afflicted which are calculated to deceive and defraud the public.' It is said he was notified to appear before the Board and defend against this charge. The fact of the notice is denied. Be that as it may, defendant never appeared; and it does not appear from anything in this record that the charge against defendant was ever investigated by the Board at the time stated in the alleged notice, or at any other time. It does appear from their minutes the Board met to investigate charges against defendant, and it is recited in the record of their proceedings that 'on the 27th day of February an advertisement appeared in the *News-Democrat*, of Belleville, Ill., under the caption "A Surgical Triumph," and announcing that Dr. J. Cresap McCoy, late of Bellevue Hospital, New York, had opened an office for a limited time only in a building fronting on the public square, Belleville, Ill. Copy of advertisement submitted to members of the Board. Similar advertisements appeared in the St. Louis papers filled with matter pertaining to J. Cresap McCoy and his wonderful attainments and success, with coarse woodcuts of the human body and its members.

"After due consideration of the evidence, and on default of defense, it was ordered * * * that certificate No. 6,793, issued to Dr. J. Cresap McCoy, be revoked for unprofessional and dishonorable conduct. It will be assumed from the recital that 'after due consideration of the evidence,' it was on account of the 'advertisements' submitted to the Board that defendant's certificate was revoked. That seems to have been regarded as 'unprofessional and dishonorable conduct.' So far as the contents of these 'advertisements' are given, they are of a very harmless kind; but, whether harmless or not, the specific charge against defendant was not for causing these publications. It was for making 'statements and promises * * * calculated to deceive and defraud the public,' and it is not perceived how these 'advertisements' could tend in the remotest degree to prove that specific charge. Had the Board found him guilty of the charge alleged against him, that defendant had made 'statements and promises * * * calculated to deceive and defraud the public,' that, indeed, would have been 'unprofessional and dishonorable conduct.' But the Board did not find him guilty of any such conduct, nor does it appear the Board ever investigated that particular charge against him, and that was the only specific charge alleged against him."

Expert Testimony.

Of all the causes which tend to discredit science, not one is more mischievous than the policy of the courts with regard to "expert testimony." Whenever a question of scientific fact or theory becomes involved in the settlement of a law suit, a swarm of "professional" witnesses are called, who testify on opposite sides, until neither judge nor jury can tell what is or what is not really settled. Of these witnesses some are trained, some are untrained; some are competent, some are incompetent; some are scrupulous, others are unprincipled; and no sure rule of discrimination is properly applied between them. As a rule, all, though sworn, are expected to act like paid attorneys, each serving the side which employs him; and the one supreme test of capacity is that of shrewdness under cross-examination. Strange perversions of science thus get before the courts, to receive equal weight with worthy evidence; doubts are raised or exaggerated, and facts are misstated or suppressed. The highest scientific authorities, the men whose researches create science, are, therefore, averse to testifying, and rarely appear in the witness box, for they cannot risk their reputations upon one-sided or partisan statements, nor do they like the misrepresentations into which their evidence may be unscrupulously distorted. Under the present usage the expert bears witness for one side against the other; whereas the truth, being "neither black nor white, but grey," may stand in the middle of the disputed territory. The science of the court room is litigious, not judicial; and no place is found for the unbiased presentation of fact, regardless of its bearing upon the personal interests at stake, and with fair credit given to genuine doubts and uncertainties. To the scientific partisan the court room doors are wide open; to the scientific jurist they are practically closed, for no one wants his services. In criminal cases, perhaps, a better showing may be made; for here we have an impersonal state seeking to do exact justice, and its experts have no private ends to gratify. If, however, they are incompetent, the criminal, perhaps a prisoner, may escape punishment; and glaring cases of this kind are on record. An expert chemist can easily cite examples in point, for prosecuting attorneys are not always able to distinguish between true and false ex-

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perts, and the latter sometimes destroy the evidence of crime in their blundering efforts to detect it.

Most men of science, and, indeed, most professional men, have two reputations—the one within, the other without the ranks of their colaborers. The two are rarely, if ever, quite commensurable, for popular repute may vary widely from true professional standing, and the quack is often better known to the world at large than the man of really solid attainments. There are quacks in science, just as elsewhere, and these men sometimes have prodigious popular reputations. One of them, widely known as an expert in the courts and on the certificate of patent medicine venders, was once called upon to analyze a commercial product. "Do you want this sample analyzed to *buy* or to *sell*?" was his modest inquiry. Still another class of experts, having credible standing among their fellows as regards knowledge and ability, is made up of men to whom a science is a trade rather than a profession; a business in which money is to be made, decently and honorably, of course, but with no place in it for sentimentality or unselfish devotion to abstract principles. They enter the court room, as do the lawyers, to win cases for their clients; not by unfair means or trickery, but by the strongest presentation of *favorable* evidence. To present, as expert *witnesses*, the whole argument *pro* and *con*, is not their recognized function. They answer certain questions, which have been carefully agreed beforehand; they evade opposing questions as far and as adroitly as possible; but science itself is not a client, and has no true representation in the court.

It goes almost without saying that, if science is to grow and flourish, it must be esteemed and respected by the community. Its advocates, therefore, to protect themselves, must oppose every policy which tends to its disparagement. Nearly every trial in which experts are called is harmful to the interests of science, for its supposed representatives too often forget their duty, and a feeling is spread abroad that all its conceptions are fanciful and uncertain. The disputes of litigation do not add to its dignity. It is, of course, impracticable to abolish expert testimony, even if the crudest and most venal kind; for each side in a suit has the manifest right to submit whatever evidence it can get in its own favor. The problem is to modify the evil, and to reduce its influence to a minimum. How can this best be accomplished?

From what has already been said it will be easily seen that the position of an expert is different from an ordinary witness. The latter testifies to facts which, bearing directly upon the case under trial, are a part of his personal knowledge, independently of all abstractions or principles. He has seen a murder committed, he identifies a person or a signature, he met a certain man at a certain time or place, and the like. In most of these points the testimony of the most ignorant laborer is as good as that of the highest scholar, for they relate to the narrowest and simplest kinds of experience, and involve no mental training whatever. The expert, on the other hand, is nearer akin to the attorney; he testifies to matters which involve more than bare facts, which require special training, and reach out into points of delicate judgment, careful interpretation of evidence, and statements of what is or is not received as scientific opinion. The ordinary witness is well within the range of experience of laymen or the jury; the expert speaks of regions into which the jurors have never entered. He testifies, but he also cross-examines, albeit by proxy; for he supplies lawyers on the same side with himself with questions for the confounding of his adversary. The attorney is merely a legal expert who argues a case for his client, but who is not sworn to speak the truth; the expert witness argues, but under an oath which admits of reservations. The two are different in matters of form, but not in matters of practice. They are, in short, colleagues.

Now in the organization of the Courts the legal elements have a position of peculiar advantage. First there are the opposing lawyers, who were once examined for admission to the bar, and who may be debarred for unworthy or unprofessional conduct. Each argues his case in favor of his client, raising a legal fog, or clearing away confusion according to which policy is the better. But over them is the bench, with its trained experts sitting in judgment on the case, deciding all principles of law as controversy arises, listening to and weighing the arguments, and finally in jury trials, addressing a charge to the jury. The legal questions are discussed by legal experts and decided by impartial legal arbiters; but the scientific problems which come before a court are subjected to no such arbitration. Just here a line of reform is plainly indicated—not as to the final settlement of scientific questions of cause, but at least as to their proper presentation before judges and jurors. Between opposing experts only experts can decide.

Two measures at once suggest themselves: First, that all experts that desire court practice should be registered, or go through some form of admission to practice, in such a way as to certify in a measure to their having received a proper scientific training. The time of the courts should not be wasted by scientific dabblers or amateurs. Experts should also be liable to something like disbarment for sufficient cause. Secondly, whenever the parties to a suit bring in expert testimony, the court itself should have the right to summon other experts, who, standing in a semi-judicial and non-partisan position, could listen to evidence and arguments, weigh both, and aid the judges either in the preparation of their opinion, or in framing their charge to the jury. So, just as legal experts pass upon matters of law, the scientific experts would pass upon matters of science, and the results could not be other than favorable. Pretenders, getting less easily before the courts, would testify less confidently if they knew that all their statements were to be properly reviewed; science itself would be more fairly represented, public interests would be subserved, and charlatany would be the other sufferer.—*Frank W. Clarke, in Popular Science Monthly.*

After a final decree, and the term ended, a cause cannot be reheard on petition. Parker *vs.* Logan, S. C. App. Va.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 10th, 1888.

In the matter of the Estate of **Enoch Ridgway**, late of Washington, in the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the Will annexed on the Estate of the said deceased, has this day been made by Henrietta F. Ridgway.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters of Administration with the Will annexed on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
No. 3235. Ad. D. 14.
46 W. B. Snell and H. L. Prince, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of November, 1888.

Bartow L. Walker et al. vs. Thomas D. Walker et al. } No. 11258. Docket 28.

On motion of the plaintiff, by Mr. W. P. Bell, their solicitor, it is ordered that the defendant, **Thomas D. Walker**, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the sale of lot numbered seven (7), in square numbered eight hundred and thirty-four (834), whereof the plaintiffs are owners of one moiety; preliminary to which the writ *de lunatico inquirendo* to issue as to defendant Mary C. Walker.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of November, A. D. 1888.

Frances C. Jones vs. John Jones et al. } 11364. Eq. Doc. 28.

Hosea B. Moulton, the trustee herein, having reported a sale of the east half of sub-lot numbered forty-one (41), in square numbered three hundred and sixty-seven (367), in the City of Washington and District of Columbia, to James H. Marr, agent for John T. Arms, for one thousand and fifty dollars ($1,050), it is, this 9th day of November, A. D. 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 9th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

By the Court. W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk,
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Horace S. Johnston**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and Codicil thereto annexed and for Letters Testamentary on the Estate of the said deceased, has this day been made by Thurston B. Johnston and Walter A. Johnston.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 11 o'clock a. m., to show cause why said Will and one Codicil thereto annexed should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 H. O. & R. Claughton, Proctors.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Saimon B. Colby**, late of the City of Brooklyn, New York, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Thomas U. Joyce, of New York City, N. Y.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased, should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and the *Brooklyn Eagle*, of Brooklyn, N. Y., previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 No. 3277. Ad. D. 14. John Cruikshank, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Gustav Adolph Buchholz**, late of Germany, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Octavius Knight.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 W. P. Bell, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Sitting in Equity, November 10, 1888.

Frank Hume vs. Della B. Keefe et al. } 11056. Eq. Doc. 28.

Upon consideration of the report of Ferdinand Schmidt and Neal T. Murray, trustees, it is, this 10th day of November, A. D. 1888, ordered that the sale of the real estate known as all of lot B and the east ten inches of lot A, in Wallach's subdivision of part of square 551, in Washington, D. C., to Della B. Keefe, for the sum of $2,845, be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, 1888.

Provided a copy of this order be published once a week for three successive weeks before said day in the WASHINGTON LAW REPORTER.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 14th, 1888.

In the matter of the Estate of **John H. Houston**, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased, has this day been made by Thomas Truxtun Houston, who prays that such letters may be granted to John F. Cox, Esq.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 11 o'clock a. m., to show cause why Letters of Administration d. b. n. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 No. 6390. (Ad. D. 6.) Old Series.
Worthington & Heald, Proctors.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
In Equity.

Bertha L. Robinson vs. George F. Robinson et al. } 11235. Eq. Doc. 28.

Charles M. Matthews, trustee in the above cause, having made sale of what is known as the Foundry Mill property, on the Chesapeake and Ohio Canal, situated west of Georgetown, in the District of Columbia, with all the real estate, milling property and water rights thereto belonging to Robert B. Tenney, of the District of Columbia, at and for the sum of fifty-nine hundred ($5,900.00) dollars, it is, by the Court, this 30th day of October, 1888, ordered that said sale be, and the same is, ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of November, 1888.

Provided a copy of this order be inserted in the WASHINGTON LAW REPORTER once a week for three successive weeks before said 30th day of November, 1888.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
44 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.

October 30th, 1888.

In the case of Joseph Auerbach, Administrator of Adolph H. Von Luettwitz, deceased, the Administrator aforesaid has, with the approval of the Court, appointed Friday, the 23d day of November, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Administrator will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
44 No. 2690. Ad. D. 13. Chapin Brown, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. Richards et al. vs. Charles Medford et al. } 11036 and 11170 (Consolidated.) Equity Docket 28.

The trustees herein, A. B. Duvall, J. H. Marr and W. J. Newton, having reported to the Court that they have sold to Samuel Ross sub-lots 31 to 38, square 640, at and for $1,500.00 for each of said sub-lots, and sub-lot 39 in said square, at and for $2,570, aggregating $14,510, it is, this 29th day of October, A. D. 1888, ordered that said sales be ratified and confirmed finally, unless cause to the contrary be shown on or before the 29th day of November next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
44 By M. A. CLANCY, Ass't Clerk,

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. Richards et al. vs. C. Medford et al. } 11036 and 11170 consolidated. Equity Docket 28.

The trustees herein, A. B. Duvall, J. H. Marr and A. B. Williams, having reported to the Court the following bids of Samuel Ross, viz.: the sum of $650 for each of the sub-lots 40, 41, 44, 45, 46 and 52, in square 640; the sum of $660 for sub-lot 43, in said square; the sum of $590 for each of the sub-lots 49 and 51, in said square; the sum of $580 for sub-lot 50, in said square; the sum of $585 for sub-lot 48, in said square, and the sum of $575 for sub-lot 47, in said square, aggregating $8,130, it is, by the Court, this 31st day of October, A. D. 1888, ordered that said bids be accepted by said trustees, and that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of November next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
45 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Sarah A. Dickson, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of October, 1888.

WM. A. LISHER, Ex'r, 34 G st. n. w.
45 No. 3213. Ad. D. 14. E. H. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Walter L. Hospital, by his next friend, Charles H. Demar, vs. Charles H. Hospital et al. } 11360. Equity Docket 28.

Charles H. Cragin, the trustee appointed by decree passed in this cause to sell part of lot 6, in Thomas Brown's subdivision of Lee's Hill, situated in Georgetown, District of Columbia, as described in the bill of complaint, having reported to the Court that, after complying with the terms of said decree, he offered for sale at public auction, in front of the premises, on October 20th, 1888, said real estate, and that David Auld became the purchaser thereof, at and for the sum of fifteen hundred and sixty-five dollars, it is, by the Court, this 31st day of October, 1888, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of December, 1888.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER before said date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
45 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Francis J. Ludeke, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November 1888.

M. ELIZABETH LUDEKE, Adm'x, 3249 M st.
45 No. 3266. Ad. D. 14. Wm. H. Manogue, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Hannah Monroe, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1888.

JOHN KELLY, Ex'r, 1409 W st. n. w.
45 No. 3271. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Thomas J. Fisher, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 2d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 2d day of November, 1888.

EDWARD J. STELLWAGEN,
THOMAS M. GALE,
GEORGE E. HAMILTON,
Executors.

44 No. 3270. Ad. D. 14.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 26th day of October, A. D. 1888.

Charles A. Springman, Plaintiff, vs. Henry A. Mathiot, Defendant. } No. 11283. Eq. Docket 28.

On motion of the plaintiff, by Mr. Perry, his solicitor, it is ordered that the defendant, Henry A. Mathiot, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct a defective acknowledgment by George Mathiot, deceased, father of the said defendant, of a deed made by him, the said George Mathiot, to Robert M. Combs, on the 3d day of September, 1851, the said deed purporting to convey original lot 14, in square 693, in the City of Washington, in the District of Columbia. The plaintiff claims as assignee of the said Combs, and the defendant is sued upon the said George Mathoit's covenant for further conveyance and as one of the heirs at law of the said George Mathiot, to whom as such the said lot descended.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
44 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of November, A. D. 1888.

Marion B. Sheridan, Plaintiff, vs. Alonzo A. Marr, Matthew Goddard, John T. Armes, Defendants. } Eq. No. 11366. Docket 28.

On motion of the plaintiff, by Messrs. Walter H. Acker and Campbell W. Bushnell, her attorneys, it is ordered that the defendants cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest Alonzo A. Marr of all right, title or interest as trustee under a certain deed of trust executed on the nineteenth day of October, A. D. 1883, and recorded in Liber 1055, Folio 392, of the Recorder of Deed's Office of the District of Columbia, and for the appointing of a new trustee in place and stead of the said Alonzo A. Marr.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
45 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John A. Boland et al. vs. Catharine M. Boland. } No. 11389. Equity.

Job Barnard, the trustee herein, having reported a sale of part of lots 21 and 22, in square 625, in the City of Washington, in the District of Columbia, to John Burns, for $2,290, it is, this 7th day of November, 1888, ordered that said sale be confirmed on the 7th day of December, 1888, unless cause to the contrary be shown before that day.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
45 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th of November, 1888.

Hattie V. Turner vs. George Turner. } No. 11369. Docket 28.

On motion of the plaintiff, by Mr. J. Guilford White, his solicitor, it is ordered that the defendant, George Turner, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the grounds of habitual drunkenness, desertion and non support.

Provided notice hereof be published once a week for three successive weeks in the *Washington Post* and the WASHINGTON LAW REPORTER.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
45 By M. A. CLANCY, Ass't Clerk.

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WASHINGTON, D. C. - - NOVEMBER 28, 1888

The Murders in East London.

Up to the time of our going to press, the perpetrator or perpetrators of that series of murders known as the Whitechapel Tragedies, are still at large, and, so far as public information goes no important clue to his or their whereabouts has been found. The London populace has displayed its habitual characteristics in connection with these crimes. There has been the usual unreasoning panic—excusable, perhaps, among the wretched women who belong to the class from which the several victims have seemingly been chosen; barely excusable, too, on the part of people who reside in the districts where such daring assassinations have occurred; but surely in no degree to be justified in the case of the educated and reasoning citizens at large, or in the case of any section of the metropolitan press. On the subject of the murders the London public has produced a greater quantity of egregiously foolish utterances, in the different shapes of rumor, comment and so-called suggestion, than could well have been collected from a similar number of people in any part of the world. It has also, as a matter of course, blamed the police; while at the same time it has, doubtless with the best intentions, done probably as much as in it lay to increase the difficulties in the way of detection. All this was to be looked for. It constitutes one of the most formidable difficulties with which the police are confronted in a case of the kind. And it is hardly to be wondered at, in the circumstances, that many of those engaged in the detection of crime should be willing to dispense with the slight assistance which is to be gained by partially taking the public into their confidence, since it is so disproportionate a compensation for what is thereby lost.

The fact, however, that the murderer or murderers have still to be tracked out, is an instructive one. For several weeks all the skill and all the effort of a great system of police have utterly failed to connect any one with a series of atrocious murders, committed not in solitary places, but in one of the most densely populated districts of London; not in the recesses of some lonely wood, but on the public streets of the largest city in the world. The murderer has succeeded in avoiding suspicion during all that time. No doubt the very immensity of the population may be an element of safety to the guilty person in such a case. If he once get clear of the immediate vicinity of his victim, concealment and escape are obviously more easy amid such a throng—even should he have been momentarily seen in suspicious circumstances. But should no one have seen the deed, and should no one have seen the murderer near the spot even for a moment, it is not unlike the proverbial looking for a needle in a haystack to begin to seek for him among some hundreds of thousands of men, not to mention the watching of all the countless egresses from the neighborhood. Yet, after making due allowance for these considerations, it is surprising that in the present cases there has been a failure to discover the perpetrator or perpetrators of the deeds. For they have not been ordinary murderers. They have not been simple in their character, or bare of particulars. Not only are the details as revolting as any which the records of medical jurisprudence contain; they are also marked by certain characteristics which, at first sight, would seem to afford a peculiarly strong likelihood of the crimes being cleared up. The very number of the crimes; the almost exact repetition of the murderer's procedure in each; the similarity of hour and circumstance; the elaborate mutilation of the bodies; the selection of victims from one sex and class only, and the like—these things might not unnaturally be expected to give some clue. Yet this abundance of circumstances gives none. That all these facts will be strong links in the chain of circumstantial evidence hereafter is almost certain. But something further must first emerge before they can be of use in connecting a criminal with the crimes. So far from giving a clue, they would seem to conspire to baffle the police, who, to judge from indiscriminate arrests and wholesale search, are not yet on the track.

It may not be amiss to consider for a little some of the peculiar features of these murders, in view of the theory which has been put forward and widely favored, that they are the handiwork of a homicidal maniac. Without at all prejudging the case, we may discuss shortly how far the facts give color to this explanation, and how far they consist with alleged instances of this monomania—the *monomanie meurtriere* of the French alienists.

In so far as possible we shall, in these few remarks, avoid touching on the question of the reality or non-reality of what is known by the various names of Affective Insanity, Moral Mania, and in the language of Pinel, who first maintained its existence, *Manie (ou Monomanie) sans delire.* This derangement is defined by Pritchard as consisting in "a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesson of the intellect or knowing and reasoning faculties, and particularly without any maniacal halluciation." (Cyclop. of Practical Med., art. Insanity, p. 825). The reality of such a state has been maintained, though with certain qualifications, by such distinguished alienists as Pinel, Esquirol, Georget, Gall, Marc, Rush, Reil, Andrew Combe, Conolly, Pritchard, Pagan, Ray, and Professor Maudsley. Yet many call that reality in question, and deny the existence of an irresistible criminal impulse in minds otherwise sound. "Public writers and lawyers," says Dr. Maudsley (Responsibility in Mental Diseases, p. 150, 3rd edit.), "naturally jealous of the application of the doctrine to excuse crime, have rejected and reviled it as a dangerous and absurd medical crotchet; having been probably the more moved to do so because they perceive that, if it be admitted, they will be impotent, by reason of their ignorance of insanity, to put a prop-

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er check upon ts application." It is better not to expose oneself to the reproach of this too keen controversialist in a place where there is not space to defend one's position. So we pronounce neither on the one side nor the other. M. Breschet remarks that the line of demarcation between depravity and madness is very difficult to draw. This is sufficient for us. It is also the gist of the matter. For, admitting for the moment the existence of a pathological phenomenon of a perversion of the affections without a derangement of the intellect, there is a further question—not to be settled off-hand by mere generalities. Ought such a form of mental disorder to involve irresponsibility for crime in the same way as intellectual disorder? Even Professor Maudsley shrinks from answering this universally in the affirmative, and considers the admission of a modified responsibility, according to the special circumstances of the case, to be "the truest justice."

It was the very atrocity of the Whitechapel murders that gave rise to the theory of their being the work of a madman. It is not a novel line of reasoning, this. Georget, when dealing with the notorious case of Antoine Leger, who was tried in 1824 for the violation and murder of a girl of twelve, remarks: "*Plus un crime est inouï, a dit un juriste (je ne sais lequel; . . .) moins il faut en chercher la cause dans les mobiles ordinaires des actions humaines.*" "The more strange and unheard of a crime is, the less need one seek for its cause among the ordinary motives of human actions." Only let the deed be surpassingly barbarous, and the ordinary mind will at once leap to the conclusion that it was a maniac who wrought it. Its very wantonness and shocking brutality are considered inexplicable on any other hypothesis save that of an unhinged and disordered mind. Now the inference is quite fallacious. There are many extraneous considerations to be kept in view—as, for example, that the mutilation may be a mere ruse in order to mislead the investigators, or even, should the culprit look so far ahead, to give color to a plea of insanity when things reach that pass. But putting such aside for the present, it is rash to conclude that there is any limit to the depravity of human nature. From this ground of sheer brutality by itself, no inference of madness ought ever to be drawn. Some of the most barbarous murders on record have been perpetrated by admittedly sane men; men on whose perfect soundness of mind no doubt has ever been cast. Nor is it to be forgotten than an ordinary execution in this country of ours in bygone times was certainly not inferior in savagery to these London outrages. Disembowelling, and plucking out the heart while the victim still breathed, and quartering after death, were regular practices, sanctioned by public opinion, ordained by men whom we still count enlightened. It cannot be pretended that these, continued for centuries, were evidences of insanity on the part of the people who permitted their infliction. They were evidences of the case and brutal side of human nature—sane and sound human nature—which it is the function of criminal law to repress. Uncivilized savages, too, of our own time, still revel daily in atrocious cruelties, even to hear of which makes one shudder. Yet we do not stamp these races as universally mad and irresponsible. No more is mere barbarity, when displayed in our own time and country, to be regarded as necessarily a symptom of mental derangement, or of anything but great depravity. The mutilation of the bodies of these wretched women in East London, taken by itself, is no indication whatever of insanity on the part of the perpetrator or perpetrators of the deeds.

It is said that the hypothesis of insanity as an explanation of these startling crimes, is borne out by the apparent absence of anything like an adequate motive.

The circumstances certainly point to none. The existence of the customary motives to murder seems to be negatived by all that is known. The object cannot have been robbery or gain; the poverty of the murdered woman in each case negatives that. Assassination can scarcely have resulted from an impulse of sudden anger; the very number and similarity of the crimes negative such a possibility. As unlikely is it that the motive was a long-cherished revenge; the fact that the butchery was practiced not on an individual or set of individuals, but on the members of a class (apparently on such members merely as chance threw first in the murderer's way) seems to negative that idea. The suggestion that the crimes were committed for the sake of obtaining from the bodies a certain organ, to be sold for scientific purposes, is, of course, untenable. The state of the market for such articles negatives the hypothesis. One fails to descry any motive. But this failure is no ground for inferring insanity, and would be dangerous so to regard it. Apparent absence of motive is no criterion. No doubt in cases of alleged kleptomania this element is of first importance. If a person in comfortable circumstances financially, with the means even of giving charity to others, secretly fill her pockets with bread at the table of a friend (as in an authenic case recorded by Dr. Rush), certainly the absence of reasonable motive is all but conclusive of an irresistible propensity to steal. But in this respect the crime of theft stands absolutely alone. And even in the case of theft, were the article stolen anything but a commodity readily obtainable in quantity by the wealthy purloiner—were it, for example, a curio, or article of vertu, mere affluence would not infer absence of motive. In the case of any other crime, it is the extreme of rashness to conclude that motive is absent, because it is unascertainable, and even defies conjecture. If one but practise a little introspection, the variety and the apparently trifling nature of the motives which sometimes actuate man, even in innocent matters, must strike him. Further, that these secret springs of action should be obscure to others must appear quite natural. In this respect of want of adequate motive, the London tragedies would be hard to bring within the category of so-called *moral* mania. *Intellectual* derangement might account for them, so far as this point is concerned. Absence of reasonable motive and presence of unreasonable motive—the play of hallucinations and delusions—may turn out to be a plausible explanation. But, in so far as motive goes, the theory that these crimes are the results of *monomanie sans delire*, seems untenable. They bear no resemblance to

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the few instances of this alleged disease recorded and repeated in every medical treatise on the subject. A sudden and "unaccountable" desire to take life: a wife waking in the night with an irresistible impulse to kill the husband at her side, with no reason for it and in spite of strong affection for him; a servant, while undressing a child of whom she had the charge, being struck with the whiteness of its skin, and thereby possessed by an impulse to murder it; and so forth—an inexplicable craving, which is not persistent. But here we have something different. The impulse was, to all appearance sustained, unless, indeed, these various murders turn out to be the work of several individuals, and those unconnected with each other, the later cases being the result of a morbid imitation of the earlier. It was not a sudden flash out of a propensity to kill. It was persistent or recurrent. A most common evidence of this so-called insane and irresistible impulse is the voluntary confession of the act. Immediately the impulse is gratified it seems to pass off, and the murderer quietly surrenders himself to the proper authorities. This is a strong argument in favor of the insane nature of the impulse. It will, we believe, be acknowledged by medical observers to be the fact, that of those alleged homicidal maniacs who fly after committing the murder, all show unmistakable symptoms of intellectual insanity. On this ground alone, then, we are forced to the conclusion that the apparent absence of motive in these London murders is not to be explained on the irresistible criminal impulse theory, and that the case is outside the category of "moral mania."

The craft and cunning evinced in the murders in question seem little to consist with insanity. The rash and uncalculating act of the lunatic is not here. No doubt there are on record a few isolated instances of considerable caution being shown on the part of insane homicides. But we are not acquainted with any which approach to the present in display of prudence and circumspection. The craftiness of the author, or authors, of these deeds is astounding, and the highest tribute to it is the fact that all attempts at detection have been made in vain thereto. There is, first, cool and deliberate preparation. There is then a careful selection of time and place—darkness and seclusion. There is the choice of a class of victim, which of all others, can most readily, and as a matter of ordinary course, be decoyed away alone to a secluded place of the kind and at such an hour. The actual execution of his foul purpose must have been swift and dexterous, and shows coolness of hand and steadiness of purpose. Then all traces of the crime must have been removed from the assassin with great skill and foresight. The perfect circumspection which has characterized his subsequent movements, and has secured complete concealment for him hitherto, have been skillful in the extreme, and must have been previously devised. Lastly, the daring shown in the repetition of the atrocities (assuming them for the moment to be the work of one hand) is only to be equalled by the caution shown in refraining from any too foolhardy attempt to repeat them where detection was imminent. These things are all markedly in the direction of disproving insanity. Dr. Ray, in contrasting the same criminal with the insane, remarks: "The criminal lays plans for the execution of his designs—time, place, and weapons are all suited to his purpose; and when successful, he either flies from the scene of his enormities, or makes every effort to avoid discovery. The homicidal monomaniac, on the contrary, for the most part consults none of the usual conveniences of crime; he falls upon the object of his prey, oftentimes without the most proper means for accomplishing his purpose, and perhaps in the presence of a multitude, as if expressly to court observation, and then voluntarily surrenders himself to the constituted authorities." (Medical Jurisprudence of Insanity, p. 157).

It has been pretty generally thought that the fact that the victims were all women of loose character presents a difficulty in the case, and that this, taken along with the particulars of the mutilation, indicates the presence of an erotic element. This is open to doubt. For one thing, erotic and homicidal tendency do not seem to have been found to co-exist. But the inference seems superfluous, too, in order to explain the choice of prostitutes as victims. The true explanation is probably that which we have indicated above, viz, that members of this class were more easily and unsuspectingly lured away to a lonely place.—*Journal of Jurisprudence.*

SUPREME COURT OF THE UNITED STATES.

HENRY W. JAEHNE, *Appellant*,
vs.
THE PEOPLE OF THE STATE OF NEW YORK.

Appeal from the Circuit Court of the United States for the Southern District of New York.

[November 12th, 1888.]

A general law for the punishment of offences, which endeavors to reach by its retroactive operation acts before committed, as well as to prescribe a rule of conduct for the citizen in future, is void so far as it is retrospective; but such invalidity does not affect the operation of the law in regard to the cases which are within the legislative control.

MR. CHIEF JUSTICE FULLER delivered the opinion of the Court:

This is an appeal from an order of the Circuit Court of the United States for the Southern District of New York denying appellant's petition for the writs of *habeas corpus* and *certiorari*.

The petition alleges that petitioner was convicted in the Court of Oyer and Terminer of the City and County of New York, in May, 1886, of the crime of bribery, committed as a member of the common council of the City of New York, and was sentenced, May 20th, 1886, to be imprisoned in the State prison for the term of nine years and ten months, and entered upon such imprisonment May 21st; that "the only authority of law for said sentence upon said conviction is a statute of the State of New York, passed July 1, 1882, and known as the 'Consolidation Act,' and especially the 2143d section thereof, by force of which the 'Penal Code,' otherwise inapplicable, is made to apply to said offence, and thereby the offence is made punishable, although committed before the 'Consolidation Act' took

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effect, as well as when committed after, indifferently and indistinguishably, by a maximum imprisonment of ten years in State prison; whereas, before that act took effect, said offence was punishable by a maximum imprisonment in the penitentiary of two years;" that said law is *ex post facto;* and that petitioner, having served the full term of imprisonment which could lawfully be imposed, is entitled to be discharged.

The Penal Code of the State of New York took effect as a law December 1st, 1882, and, under its 72d section, the maximum punishment for the crime of bribery committed by any person who executes any of the functions of a public office was fixed at ten years imprisonment, or $5,000 fine, or both.

The City Consolidation Act was passed July 1st, 1882, to take effect March 1st, 1883, and by section 2143 it was provided that the Penal Code should have the same effect as if passed after "this act."

By section 100 of the New York City charter of 1873 (chap. 335, Laws, 1873), the crime of bribery committed by a member of the common council subjected him upon conviction to imprisonment not exceeding two years, or fine, or both.

By section 58 of the Consolidation Act this section 100 of the act of 1873 was re-enacted.

By section 725 of the Penal Code "all acts incorporating municipal corporations, and acts amending acts of incorporation or charters of such corporation," were, *inter alia*, declared not to be affected by it, and recognized as continuing in force, notwithstanding the Code, except so far as repealed by subsequent laws.

It is claimed that section 100 of the act of 1873 was not repealed by the Penal Code, but was excepted from its operation by section 725, and continued in force for the four months between December 1st, 1882, when the Penal Code went into operation, and March 1st, 1883, when the Consolidation Act took effect, and that section 58 of the latter act then replaced it, and was not superseded by section 72 of the Penal Code, under section 2143 of the Consolidation Act, but kept in force by section 725 of the Penal Code. Or, in other words, it is argued that section 100, being a section of the city charter, was saved from repeal by the Penal Code by section 725 of the latter, and was not repealed until by the subsequent law known as the City Consolidation Act, which took effect March 1st, 1883, and was even then continued in force as section 58 of the Consolidation Act, which is identical with said section 100; and that at all events the measure of punishment from December 1st, 1882, to March 1st, 1883, is that prescribed by section 100 of the old charter and repeated in section 58 of the new.

And it is insisted that section 72 of the Penal Code, with the force and effect given it by section 2143 of the Consolidation Act, under the decisions of the New York Court of Appeals, is *ex post facto*, and therefore void, in that thereby the maximum punishment by imprisonment of the crime of bribery committed before as well as after the Consolidation Act went into effect was changed from two to ten years.

In The People *vs.* O'Neill. 109 N. Y., 261, and People *vs.* Jaehne, 103 N. Y., 102, it was held by the Court of Appeals that section 100 of chapter 335 of the act of 1873 was not within the saving clause of section 725 of the Penal Code, but, on the contrary, was repealed by that code as soon as it went into operation, December 1st, 1882, and that section 58 of the Consolidation Act, which is but a transcript of said section 100, was not kept in force by said section 725, and was superseded by section 72 of the Penal Code, which latter section was prospective merely, and could only operate upon the crime of bribery committed by a member of the common council after the Penal Code took effect. Accepting the conclusions of the highest court of the State of New York as to the operation of the acts in question in substituting, under section 72, a longer term of imprisonment for that which had theretofore existed, it is clear that section 72 governed future cases only; but, even if taken in connection with all the other statutory provisions referred to, it could be construed as *also* retroactive, as it was admitted upon the argument that the crime, upon conviction of which the petitioner was sentenced to the imprisonment he is now undergoing, was charged to have been committed in 1884, long after the Penal Code and the Consolidation Act went into effect, we perceive no reason for the discharge of the prisoner upon the ground that section 72 might be held invalid in respect to a crime committed between December 1st, 1882, and April 1st, 1883, if drawn in question in a proper case. The rule upon this subject, which we consider applicable, is that "a legislative act may be entirely valid as to some classes of cases and clearly void as to others. A general law for the punishment of offenses, which should endeavor to reach by its retroactive operation acts before committed, as well as to prescribe a rule of conduct for the citizen in future, would be void so far as it was retrospective; but such invalidity would not affect the operation of the law in regard to the cases which were within the legislative control." Cooley, Const. Lim., 5th ed., 215.

The order of the Circuit Court refusing the writs was right, and it is

Affirmed.

THE measure of damages recoverable by a pledgor against a pledgee of non-divided paying stocks as collateral security, the pledgee having, under an honest mistake, sold the stocks contrary to instructions before the debt was due, and applied the proceeds to the payment thereof, is the difference between the amount of the debt with interest to the date of the sale of the stock, and the amount for which the pledgor could, within a reasonable time after learning of the sale, have gone into the market and repurchased the stocks. New York Court of Appeals, Oct. 2, 1888. Wright *vs.* Bank of the Metropolis.

WHEN THERE is no present immediate intention that the writ shall be served, though the writ be in the possession of the officer, but only an intention that service of it shall be made at some future time, or upon the happening of some future event, the suit is not commenced till such time arrives or such event happens. Cross *et al. vs.* Barber *et ux.*, Supreme Court of Rhode Island, July 7, 1888.

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Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

JOHN W. P. MYERS
vs.
MAURICE J. ADLER ET AL.

IN EQUITY. No. 9568.

Decided October 8, 1888.

The CHIEF JUSTICE, JUSTICES COX and MERRICK sitting.

1. A devise to one "during the term of her natural life, so long as she shall remain my widow and unmarried," and "from and after her death" to trustees to sell and pay certain legacies, creates a life estate with a vested remainder in the trustees; the words "so long as she shall remain my widow" being merely a qualification, or condition subsequent, upon the breach of which the heirs might enter and dispossess her; but whether such entry would defeat the remainder over, *quære*.
2. The distinction between a contingent remainder and a vested remainder, supported by a particular estate liable to be defeated by breach of a condition subsequent annexed thereto, pointed out by the Court and explained.
3. The test of a vested remainder is its present capacity to take effect in possession whenever the prior estate shall determine.
4. Where a legacy payable out of real estate is made payable at a future time, and it is evident that the payment is withheld in order that the devisee of the estate may in the meantime enjoy the same free from the burden of the legacy, such a legacy does not lapse if the legatee die before the time fixed for payment.

APPEAL by complainant from a decree made upon a hearing in equity on bill and answer in a case involving the construction of a will.

THE FACTS are sufficiently stated in the opinion.

MR. H. O. CLAUGHTON, for complainant.

MR. FRANKLIN H. MACKEY, also for complainant.

MR. FRED. W. JONES, for defendants.

MR. JUSTICE COX delivered the opinion of the Court:

This case turns upon the proper construction to be given to the will of Charles Myers, of Georgetown. That will, after making provisions to pay for his funeral expenses and all his just debts, proceeds as follows:

"I give, devise and bequeath unto my dear wife Jane C. Myers, all of my property, both real and personal, wherever and withsoever (Sic) situated, to take, have and receive the same and the profits thereof during the term of her natural life, so long as she shall remain my widow and unmarried.

Thirdly, from and after her death, I give, devise and bequeath unto Morris J. Adler and John E. Libbey, and the survivor of them, and the heirs of such survivor, all of my real estate and personal effects, to sell and dispose of the same and valid deeds of conveyance to make to the purchasers thereof, on payment of the purchase money; and out of the proceeds of sale, after paying expenses, I devise to each of my said daughters, viz: Emma I. Myers, Fannie I. Myers, and Mary C. Myers, the sum of three thousand dollars each; which said legacies are to be taken possession of by the said Morris J. Alder and John E. Libbey, and the survivor of them and invested in real estate, or some safe securities, according to the request of my said daughters, and they to receive the rents and proffts of the same free from the control of any husbands they may marry, and not to be liable for their debts.

Fourthly, the surplus of my estate, after paying the above named legacies, I give, devise and bequeath unto Emma I. Myers, Francis I. Myers, Mary C. Myers and John W. P. Myers; to be divided equally among them, share and share alike."

Two of the daughters married, and one of them, Emma, died before her mother, after making a will by which she devised her interest in her father's estate to her two sisters. It is claimed on the part of the son, John W. P. Myers, that the interest devised to the daughters was a contingent remainder which is not the subject of devise, so that Emma's share would fall into the residue, as a lapsed legacy, and the son is entitled to share that part of his father's estate, equally with his surviving sisters.

At special term it was assumed by the Court that this was a contingent remainder, and the discussion there seems to have turned upon the point whether a contingent remainder can be devised. The Court dismissed the bill, upon the ground that the contingent remainder could be devised.

In this Court, it is claimed on the part of the defendants, the daughters, that this was a vested remainder, but that whether vested or contingent, it was capable of being devised.

We all know that the definition of a remainder is "an estate limited to take effect in possession immediately after the expiration of a prior estate created by the same instrument." We also know, from the elementary works, that remainders are vested and contingent, and that contingent remainders, again, are divided into several kinds: one kind is where the contingency upon which the estate is limited over may not take effect until after the expiration of the particular estate, or, in other words, the particular estate, expires before the contingency happens. There being no one to take the freehold, it goes back to the grantor or his heirs, and the remainder is lost; and so long as it remains uncertain whether the contingency will happen before or simultaneously with the expiration of the prior estate, it is uncertain whether the right to the remainder will ever become fixed, and it is therefore called a contingent remainder.

In this case it is maintained that the estate given to these daughters is of that description. It is contended that the devise to the wife is during her widowhood only, while the remainder is given over upon her death, and inasmuch as her widowhood may terminate before her life, there may be a hiatus between that and the time when this remainder over is to take effect, and so long as that uncertainty exists, the remainder is contingent. Therefore, the first inquiry is, What estate was given by the will to the widow?

It will be observed that the will does not, in

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terms, give to her the property to hold during widowhood, but it is expressly given to her, "to have and receive the same and the profits thereof during the term of her natural life, so long as she shall remain my widow and unmarried."

We are unanimously of the opinion that this gave to her an estate for the term of her life, and that the words "so long as she shall remain my widow and unmarried" are merely a qualification or condition attaching to that estate, a condition subsequent upon the breach of which the estate is liable to be defeated; that is, if the widow should marry, the heirs might enter and dispossess her, and that might defeat the remainder over; but until the breach of the condition it remains a complete life estate in the widow. In 2 Washburn on Real Property, page 5, it is said:

"An instance of a condition subsequent would be a grant to A and his heirs, tenants of the manor of Dale, or to B so long as she remains a widow. The estates in these cases vest subject to be divested, in the one case upon the grantees ceasing to be tenants of Dale, and the other, upon the marriage of the grantee."

The present case is a much stronger one than that. In the case supposed, the estate was given to her so long as she was a widow, or so long as she might be a widow, and it might very well be contended that that qualification was a limitation of the estate, but in the present case the estate is given to her *for and during the term of her natural life*, so long as she should remain a widow, and that is clearly a case of a condition subsequent. The particular estate, therefore, is not an estate to her during widowhood, but it is an estate to her during her life, and the remainder is limited over to take effect upon the termination of that life estate. Therefore, there can be no possibility of a hiatus between the termination of the particular estate and the commencement of the remainder; and consequently it does not belong to the category of contingent remainders to which I have referred.

The test of a *vested* remainder is its present capacity to take effect in possession whenever the prior estate shall determine; that is, if the remainderman has the right in case of a sudden determination of the prior estate, immediately to go in and take possession, the remainder is vested.

Apply that test to the present case. At any time during the widow's life, if she had suddenly died, the trustees could have entered into possession; their remainder was therefore vested. A remainder is none the less vested because it is liable to be devested or destroyed. For example, if an estate be limited to A for life, remainder to such uses as B shall appoint, and in default of such appointment, remainder to C, the remainder to C would be vested because at any moment when A should die C would be entitled, at once, to enter into possession, but it would be simply subject to be devested by the exercise of the power of appointment. So, also, if an estate be limited to one for life and remainder over to his children, present and future, the present children have a vested remainder, liable to be devested *pro tanto* in favor of the afterborn children. Nor does the liability of the particular estate to be defeated by a breach of the condition subsequent make the remainder any the less a vested remainder. As Washburn also says, (vol. 2, p. 601 (231):

"The remainderman must accordingly wait until the particular estate has regularly determined, and can do nothing to abridge it; and if, as already stated, before that time it is defeated altogether, as by an entry by the grantor for condition broken before the remainderman comes into possession, the estate of the latter fails altogether."

That assumes, of course, that until the condition is broken, the remainder is vested.

But the argument for the complainant in this case goes further, and undertakes to deal with this as if it were the case of a pecuniary legacy payable at a future time and charged upon real estate, in which case it is claimed that upon the death of the legatee before the time of the payment, the legacy fails; in other words, that such a legacy is deemed to be contingent upon the capacity of the legatee to take at the time when the money is payable. The inclination of the Court is always to hold that a personal legacy is vested although payable *in futuro*. There are, however, cases in which Courts lean in the opposite direction. Thus:

"It is a general rule ever since Pawlett's Case (2 Ventr., 366, 1 Vern., 204, 321, 2 Ch. Rep., 286), followed by a multitude of cases, that where money is given to be paid at a future time (for if payable presently the rule cannot apply) out of a real estate, and a legatee dies before the time, it sinks into the estate; and the same rule prevails where a legacy is charged on real estate to be purchased with the residue of a personal estate. And whether the legacy be given by a parent or a stranger, charged upon land primarily, or as auxiliary to the personal estate, and though given with interest, yet if the legatee dies before it is payable, the rule is the same, and the legacy sinks into the land. 2 Madd. Ch. Rep., 25, 26."

The rule is probably stated more fully in the following quotation from Butler's Notes to Fearne on Remainders, 9th edition, page 554.

"The rule adopted in respect to legacies payable out of personal estate, that where the gift and the time of payment are distinct, the legacy vests immediately, does not hold generally in regard to legacies charged on real estate. The reason of this distinction is that in the civil law a bequest to a person to be paid at a future time was held to confer on him a present right to the legacy, notwithstanding the time of payment was future: so that immediately on the testator's decease it became in the eye of the civil law a present debt, payable at a future time, *Debitum in præsenti, solvendum in futuro*. Now anciently legatory matters arising on a personal estate were solely under the jurisdiction of the ecclesiastical courts, and the decisions of these courts were regulated by the civil law. By degrees courts of equity took cognizance of them and, with a view of uniformity of decision, adopted the rule in question. But legacies payable out of real estate never fell within the cognizance of the ecclesiastical courts; there was not, therefore, the same reason for applying this rule to that description of legacies; and as it appeared contrary to the favor which the law shows to the owner of the

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inheritance, courts regulated it as a general rule in respect to all such legacies." (Citing Pawlett's Case, *supra*.) "In respect, therefore, to legacies charged on real estate, it became a general rule that the legacies payable at a future time, whether by the language of the bequest the time is annexed to the substance or to the payment of the legacy, as a bequest to a person of a sum of money at twenty-one, or a bequest to a person of a sum of money payable to him at twenty-one, equally sink into the land for the benefit of the inheritance, if the legatee dies under twenty-one."

That rule, however, is again qualified, and the qualification is stated in 1 Jarman on Wills, 756:

"The established distinction now is that if the payment be postponed, with reference to the circumstances of the devisee of the money, as in the case of a legacy to A, to be paid to him at twenty-one years, the charge fails, as formerly, unless the devisee lives to the time of payment. * * * But, on the other hand, if the postponement of payment appear to have reference to the situation or convenience of the estate, as if land be devised to A for life, remainder to B in fee, charged with a legacy to C, payable at the death of A, the legacy will vest instanter; and, consequently, if C dies before the day of payment, his representatives will be entitled, the raising of the money being evidently deferred until the decease of A, in order that he may, in the meantime, enjoy the land free from burden. But either of these rules of construction of course will yield to an expression of a contrary intention."

Now, as thus qualified, the rule does not avail the complainant in any way in the present case, as we think, because it is the very case in which it is evident that the payment of the legacy was withheld until the decease of the widow with reference to the convenience of the estate, and in order that she might in the meantime enjoy the land free from burden.

But, speaking for myself, it is my judgment that all this learning about legacies payable *in futuro* is entirely inapplicable here. All the authorities cited under this head were cases in which the land descended or was devised to one person and the legacy charged on it to another. In this case, the land itself is primarily devised, and the devise is absolutely and unconditionally for the benefit of these legatees. It cannot be said that Emma Myers had a personal legacy of $3,000, charged on the land belonging to somebody else, for this very land was devised for her benefit and sold for her benefit *pro tanto*. The land was to be sold and turned into money for the benefit of all these legatees. It was charged, not with a legacy, but with a trust. It makes no difference whether the trustee was to hold the land and apply the rents and profits to the use of the beneficiaries or to sell the land and divide the proceeds among them. In either case, the devise was a devise of the real estate for their exclusive benefit. It was substantially and primarily a devise of the land itself, and not a devise of a personal legacy charged upon the land.

The question of equitable conversion does not figure in this case. If the daughter Emma had died intestate, then the question might be whether after the trustees had sold the land the money arising therefrom should be paid to her personal representatives or her heirs. But that question is not important here. We are satisfied that this will was valid and devised a vested interest, which could be devised; and *we, therefore, affirm the decree below*, although on different grounds from those upon which the judge at the special term decided the case.

UNITED STATES COURT OF CLAIMS.

LUCIUS H. FOOTE
vs.
THE UNITED STATES.

1. The President has authority under Article II, Section 2, of the Constitution to "nominate and, by and with the advice and consent of the Senate, appoint ambassadors and other public ministers and consuls," independently of any authority from Congress.
2. The clause of Section 2 of the annual Appropriation Act of February 26, 1883, appropriating $5,000 "for the purpose of enabling the President to extend diplomatic relations with the Government of Eastern Asia," had no connection with the subsequent appointment of an envoy extraordinary and minister plenipotentiary to Corea, so far as related to such minister's salary, which should have been paid under the provisions of Section 1675 of Revised Statutes as amended by Act of March 3, 1875.

GEORGE A. KING, ESQ., for the claimant.

ED. M. WATSON, for the Government.

OPINION.

MR. CHIEF JUSTICE RICHARDSON delivered the opinion of the Court:

The claimant was appointed and commissioned envoy extraordinary and minister plenipotentiary to Corea February 27, 1883, accepted the office and immediately entered upon its duties. He has been paid at the rate of $5,000 a year from that date to May 7, 1885.

He claims that he held that office until the latter date and became entitled to a salary of $10,000 a year under the provisions of Revised Statutes, Section 1675, as amended by the Act of March 3, 1875, chapter 153 (Supplement to Revised Statutes, 188), as follows:

"SEC. 1675. Ambassadors and envoys extraordinary and ministers plenipotentiary shall be entitled to compensation at the rates following, per annum, namely:

"Those to France, Germany, Great Britain and Russia, each, seventeen thousand five hundred dollars.

"Those to Austria, Brazil, China, Italy, Japan, Mexico and Spain, each, twelve thousand dollars.

"Those to all other countries, unless where a different compensation is prescribed by law, each, ten thousand dollars."

To overcome the express provision of the last quoted clause of that section, which prescribes a salary of $10,000 a year to envoys extraordinary and ministers plenipotentiary to all other countries than those named, and Corea was not of those named, the defendants rely upon the circumstances of the claimant's appointment, the action of the Secretary of State, and the appropriation made by Congress.

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Congress neither established nor recognized the office of envoy extraordinary and minister plenipotentiary to Corea, nor made any express appropriation to maintain it.

The annual Appropriation Act of February 26, 1383, chapter 56 (22 Stats. L., 424, 431), for the year ending June 30, 1884, contained the following:

"SEC. 2. For the purpose of enabling the President to extend diplomatic relations with the Government of Eastern Asia, five thousand dollars."

The claimant was immediately nominated as envoy extraordinary and minister plenipotentiary to Corea, the Senate consented thereto, and he was the next day so commissioned.

There seems to be no connection between the appropriation and the claimant's appointment, except that the appropriation indicated a desire on the part of Congress to extend diplomatic relations with Eastern Asia, and the Secretary of State in his first letter to the claimant refers to it as the reason which has induced the President to make the appointment. Corea was not named in the act and the money appropriated was not available until the succeeding fiscal year, commencing July 1, 1883, four months after his appointment.

The President appears to have acted upon the prerogative claimed for the Executive under the Constitution, Article II, Section 2, that "he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls," independently of any authority from Congress. This general claim of Constitutional prerogative by the Executive we considered in the case of Byers (22 C. Cls. R., 59), where authorities are cited and little remains to be added.

The course of litigation has generally been in accord with the interpretation claimed for the Executive. We have found but few statute provisions in which Congress appears to have directly dictated as to the establishment of diplomatic offices.

These are found in the following sections of the Revised Statutes. Section 1682 (first enacted in 1872, 17 Stat. L., 142), provides that "There shall be but one minister resident accredited to Guatemala, Costa Rica, Honduras, Salvador and Nicaragua." Section 1683 provides that "There shall be a diplomatic representative of the United States to each of the Republics of Hayti and Liberia." This section was first enacted in 1862, June 5, chapter 96 (12 Stat. L., 421), where the President was "authorized," not required to appoint. The title of the office was changed by act of 1866, July 25, chapter 233 (14 Stat. L., 225). The act of July 7, 1884, chapter 333 (23 Stat. L., 228) provided that "The Minister resident and consul general at Hayti shall also be accredited as charge d'affaires to Santo Domingo."

With those exceptions Congress has either appropriated a sum in gross "for the expenses of intercourse with foreign nations," leaving the establishment of both the offices and the salaries to the Executive, as in the early years of the Government pointed out in Byer's case; or as now, by Revised Statutes section 1675, fixing the salaries for all the diplomatic officers actually existing, and establishing rates for all others, thus apparently conceding power in the Executive to make diplomatic appointments other than those expressly recognized by Congress.

Perhaps these recent exceptions may be interpreted only as indicating the offices that Congress was willing to appropriate salaries for, and not as interfering with the constitutional rights claimed for the President.

The validity of the claimant's appointment was, however, not controverted at the trial, and we refer to the matter as conclusively showing that it was not dependent upon the act appropriating $5,000 for the purpose of enabling the President to extend diplomatic relations with Eastern Asia.

In the letter of instructions given to the claimant (finding 2) he was informed that his salary would be at the rate of $5,000 a year, and he was paid at that rate throughout his official term. This was clearly erroneous. Neither the Secretary of State nor the President had authority to fix the salary of an envoy extraordinary and minister plenipotentiary. This was established by Revised Statutes, section 1675, which enacts that the salaries of "those to all other countries (among which Corea must be classed), unless where a different provision is prescribed by law, each, $10,000."

No different provision for the claimant's office was prescribed by law. The appropriation to extend diplomatic relations with Eastern Asia as we have shown, did not take effect until four months after his appointment. Corea was not specifically named therein, and the money was not required to be applied to the salary of a diplomatic officer. The President might have used the money in any way he saw fit to extend diplomatic relations with any of the Eastern Nations. That it was applied towards the payment of one-half a year's salary of the claimant as established by law, does not prevent recovery of the other half. Nor does the payment out of the contingent fund of one-half of the established salary from February 27 to June 30, 1883, affect his right to the other half.

The claimant is, therefore, entitled to recover the unpaid balance of his salary of $10,000 a year so long as he was envoy extraordinary and minister plenipotentiary. That brings us to the question, when did he cease to hold that office?

He was appointed without Congressional action, and held his position at the will of the President. When by the act of July 7, 1884, chapter 333 (23 Stat. L., 228), Congress made an appropriation of $5,000 for the salary of a minister resident and consul general at Corea, the President immediately took steps to make the diplomatic mission to Corea conform to the apparent wishes of Congress, and nominated and, by and with the advice and consent of the Senate, appointed the claimant as minister resident and consul general. A commission for the new office was sent to the claimant and reached him about the 15th of September, 1884.

This was clearly the exercise of the President's will to discontinue the office of envoy extraordinary and minister plenipotentiary, and to recall the claimant from that office, and it took effect, under the circumstances, upon

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the tender and receipt of the new commission for a different office, with instructions accompanying it. The claimant declined the new appointment tendered him, and never qualified by taking the oath and giving bond as required by law.

In his letter to the Secretary of State, explaining the reasons for that determination, he said: "My present status is somewhat anomalous, but believing that there must be some provision for such cases, or some precedent to govern them, I shall continue to exercise the functions of the position until further advised." (Finding 3.)

When this lettter reached the State Department the Secretary wrote to him to take a leave of absence and come to this country, which he did. He never returned to Corea, and his resignation was finally accepted Mach 25, 1885.

The words of his letter imply that he was aware that he ceased to hold the office of envoy extraordinary and minister plenipotentiary. In connection with the facts that the Executive had provided another office to supersede that which he had held, that Congress had appropriated a salary for it, and that he had been offered the new position and declined it, we must give to those words the interpretation, not that he intended to continue to hold an office which the President had discontinued, but that his purpose was to continue to exercise the functions of the position of minister resident and consul general as an officer *de facto*. We think it was so understood both by him and by the Executive. This view is strengthened by the fact that in his last account for salary, settled at the Department, he styles himself "late minister and consul general," and in accepting his resignation the Secretary of State styles him "late minister." But whether so intended or not the facts must control, and they lead to the same result.

To hold that he ceased to be envoy extraordinary and minister plenipotentiary upon receipt of the notice of the change in the character of the mission, gives effect to the will of the President and the wishes of Congress and does justice to the claimant and to the defendants.

After September 17, 1884, until the acceptance of his resignation, he was, at most, merely a *de facto* minister resident and consul general nominally holding the office, taking leave of absence, and, so far as it appears, performing no official acts and exercising no duties, and for that time he has been paid the full salary of the office. The most favorable result for him that can be reached, upon his claim for compensation during that period, is that he may retain what he has received. (Miller's Case, 19 C. Cls., R., 353; Palen's Case, 19 C. Cls. R., 394.)

For the previous time, while he was envoy extraordinary and minister plenipotentiary, he has been paid only one-half the salary established by law for that office, and he is now entitled to judgment for the other half, amounting to $7,760.27. This point in the case is ruled by Langston's case (21 C. Cls. R., 10, affirmed on appeal 118 U. S. R., 389), wherein it was held that where Congress failed to appropriate a sum sufficient to pay the full salary fixed by statute for the office held by him and he had received only what had been appropriated, he was entitled to judgment for the unpaid balance. In the present case Congress has made no direct appropriation whatever for the salary established by law for the office held by the claimant, but he has received out of the public Treasury in some other way one-half the amount due him, leaving still unpaid the sum for which the Court gives him judgment.

Davis, J., did not sit at the hearing of this case, and took no part in the decision.

PLAINTIFF'S father induced defendant to marry him upon an oral promise that in consideration thereof, he would convey certain lands to her, but upon the morning of the wedding he conveyed the lands without consideration to the plaintiff, and soon after the marriage deserted his wife. An action of ejectment was instituted by the plaintiff and a cross-complaint filed by the defendant in which he stated the foregoing facts, prayed for specific performance of the oral antenuptial contract, and for a conveyance of the land by the grantee of her husband. *Held*, that the defendant having been induced by the grantor to irretrievably alter her condition, she was entitled to the relief sought, and that the Statute of Frauds did not apply. Peek *vs.* Peek, Supreme Court of California, September 22, 1888.

THE RULE that the servant takes the risk incidental to his employment, presupposes that the master has performed the duties of care and vigilance that the law casts upon him. It only excuses where injury results to the servant from a risk incident to the nature of the employment, not from a cause which the exercise of proper care and prudence on the part of the master would have foreseen and guarded against.

This rule applied to a want of inspection by the master of premises which were dangerous unless watched. Margaret Buckley, Administratrix, *vs.* Port Henry Iron Company, N. Y. Sup. Ct., General Term.

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1. MANDAMUS will not lie to restore one who claims to be denied his rights under the laws of the religious society to which he belongs until a decision has been arrived at in his case by a properly constituted ecclesiastical tribunal.

2. Neither will this writ issue to compel a religious society to accept a pastor appointed by the proper authority, where no temporal question is involved. State *vs.* Bibb St. Church, Supreme Court of Alabama, March 22, 1888.

A PURCHASE by an executor at a foreclosure sale of property devised by his testator and subsequently mortgaged by the devisee will not be held to be in trust for the mortgagor, there being no element of fraud in the transaction. Allen *vs.* Gillette, United States Supreme Court, May 14, 1888.

CIRCUMSTANCES stated under which the evidence shows that a purchase of goods made by the defendant was frandulent. Higgins *vs.* Lodge, Md. Ct. App., Jan. 5, 1885, 11 Atl. Rep. 846.

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THE QUESTION as to granting injunctions to restrain publication in a newspaper of reports and correspondence containing unfavorable statements as to the position and solvency of a joint stock company, considered.

Injunction to restrain the publication of future articles reflecting unfavorably on a company refused on the ground of the difficulty of granting an injunction which would not include matters that might turn out not to be libellous, and, because, if the injunction were granted in terms to restrain what was libellous, the question of libel or no libel would have to be tried in a very unsatisfactory way. Liverpool, &c., Association *vs.* Smith, High Court of Appeals, American Law Register, August, 1888.

1. A CONDITION in a policy requiring that a watchman be kept on certain premises so long as an insured mill thereon remains idle, is complied with if he continues in close proximity to the property insured, and confines himself to such location as will enable him to speedily discover the inception of a fire.

2. Placing a tank fed by a flume just below the ridge of a mill, satisfies a requirement that a supply of water shall be constantly kept on its roof. Sierra, Etc, Co., *vs.* Hartford Etc. Co, Supreme Court of California, May 21, 1888.

A TENDER of 53 17-20 tons of scrap iron is not a compliance with a contract to deliver 30 or 40 tons.

It is not a waiver of the objectien that the purchaser, when the goods were tendered, objected only to their quality. Perry *vs.* Mount Hope Iron Co., Supreme Court of Rhode Island, July 17, 1888.

IN AN action on the case for negligence against the bailee of a horse for hire, the burden is on the plaintiff to prove negligence, and it is not shifted by merely showing that the horse was sound when delivered to the bailee, and when returned that it was injured in a way that does not ordinarily occur without negligence. Malaney *vs.* Taft, Supreme Court of Vermont, September 25, 1888.

THE COURTS.

SUPREME COURT OF THE UNITED STATES.

November 26.

H. M. Lane, of Louisville; A. C. Freeman, of San Francisco, and A. G. N. Vermilye, of New York City, were admitted to practice.

1161. The U. S *vs.* McDonald. Appeal from the Court of Claims. Judgment affirmed.

73. Meissure et al. *vs.* Brun, master, etc. Decree affirmed with costs.

74. Hennesy *vs.* Woolworth et al. Decree affirmed with costs.

1032. The Fire Ins. Association (limited), *vs.* Weckham, Jr., et al. Motion to dismiss denied.

67. Denny *vs.* Bennett, as assignee, etc. Judgment affirmed with costs.

16. Hunt *vs.* Blackburn et al. Decree reversed with costs.

121. Quimby *vs.* Boyd et al. Dismissed for the want of jurisdiction.

356. Warren, etc., *vs.* The First Nat. Bank, of Toledo, O.;

357. Warren, etc., *vs.* The Sec. Nat. Bank, of Toledo, O.;

358. Warren, etc., *vs.* The Tol. Nat. Bank, of Toledo, O.;

359. Warren, etc., *vs.* The Merchants' Nat. Bank, of Toledo, O.;

360. Warren, etc., *vs.* The North. Nat. Bank, of Toledo, O Dismissed for the want of jurisdiction.

491. Randolph *vs.* The Quidneck Co. et al. Dismissed with costs pursuant to the fifteenth rule.

1014. Radford, etc., *vs.* Folsom, administratrix. Dismissed for the want of jurisdiction.

1203. The Pac. Ex. Co. *vs.* Sam Malin. Dismissed for the want of jurisdiction.

1279. Davie et al. *vs.* Miller et al. Advanced and assigned for argument on the second Monday in January next.

1200. Brooks *vs.* Ahrens, etc. Dismissed with costs.

1109. The Town of Danville, *vs.* Brown et al. Motion to vacate supersedeas argued.

4. Original. Ex parte: In the matter of The Farmers' L. and T. Co., petitioner. Return to rule filed by Mr. J. Hubley Ashton.

1173. The B. and P. R. R. Co. *vs.* Hopkins. Motion to dismiss submitted.

144. Ballard *vs.* Searls. Motion to reverse and remand submitted.

1129. Walston et al. *vs.* Nevin et al.;

1160. Roach et al. *vs.* Nevin et al. Motion to dismiss submitted.

115. Segrist *vs.* Crabtree. Motion for certiorari and for postponement of hearing submitted.

96. Purdy, administratrix, etc., *vs.* The Town of Lansing. Argument concluded.

SUPREME COURT OF THE D. C.

GENERAL TERM.

November 26.

Est. Weltha A. Emmons. Appeal dismissed in first case; decree of Probate Court affirmed in second case. Opinion by Mr. Justice Merrick.

Thomas *vs.* Holtzman. Judgment for plaintiff. Opinion by Mr. Justice Merrick.

Appleby *vs.* Smith. Judgment for defendant. Opinion by Mr. Justice Merrick.

Keyser *vs.* Pickrell. Judgment reversed and cause remanded. Opinion by Mr. Justice James.

Wright *vs.* Dearing. Judgment below affirmed.

Ament *vs.* Karr. Decree dismissing bill affirmed. Opinion by Mr. Chief Justice Bingham.

Kilbourn *vs.* Latta. Exceptions overruled and auditor's report confirmed. Opinion by Mr. Chief Justice Bingham.

Meloy *vs.* Cent. Nat. Bank. Decree dismissing bill affirmed. Opinion by Mr. Chief Justice Bingham.

IN EQUITY.—New Suits.

November 20.

11452. Elizabeth Howell, alleged lunatic: Upon petition of Merrick M. Hitchcock. To appoint a committee. Com. sol., M. T. Hitchcock.

11453. Daniel Luther, alleged lunatic: Upon petition of Commissioners of District of Columbia. To appoint committee. Com. sol., H. E. Davis.

November 21.

11454. Kate Fitzgerald, guardian, *vs.* Maurice C. Fitzgerald et al., infants. To sell infants' interest to lot. Com. sol., M. J. Colbert.

11455. William Webb et al. *vs.* Matilda W. Stanton et al. For conveyance. Com. sol., H. R. Webb.

11456. James T. Boiseau et al. *vs.* Bernard L. Anderson. To construe will and to sell. Com. sol., Eugene F. Arnold.

11457. B—. *vs.* B—. For divorce. Com. sol., Mills Dean.

11458. William Lowery *vs.* Jane Terrell et al. To enforce mechanic's lien. Com. sol., J. McD. Carrington.

11459. Same *vs.* Mary F. Howard. To enforce mechanic's lien. Com. sol., Same.

November 22.

11460. William H. Lee *vs.* Samuel A. Lee et al. For conveyance. Com. sol., J. H. Smith.

11461. James H. Cohen, alleged lunatic: Upon petition of Commissioners of District of Columbia. For appointment of committee. Com. sol., H. E. Davis.

11462. Thomas W. Smith *vs.* Honora Roach et al. To enforce mechanic's lien. Com. sol., S. T. Thomas.

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November 23.

11463. Jonas H. McGowan et al. *vs.* Oscar W. White et al. For partition by sale. Com. sol., N. Wilson.

11464. John T. Fitzhugh *vs.* Lucy Fitzhugh. For divorce. Com. sol., I. Williamson.

November 24.

11465. Elias Jamieson *vs.* Catherine M. Kennedy et al. To annul conveyance. Com. sol., Chapin Brown.

11466. The Washington Gas Light Co. et al. *vs.* Elizabeth Dasenbrook et al To enforce mechanic's lien. Com. sols., Stephens and Elliot.

11467. Alice Dulaney et al. *vs.* Thomas Dulaney et al. For partition. Com. sol., B. F. Leighton.

CIRCUIT COURT.—New Suits at Law.

November 20.

29135. Mary C. Whelan *vs.* E. C. Upham. Damages, $21,000. Plffs attys, Williamson and Truitt.

29136. Lewis Johnson & Co. *vs.* George P. Cannon. Judgment of Justice Walter, $99.02. Plffs atty, J. J. Wilmarth.

29137. Same *vs.* Same. Judgment of Justice Walter, $70. Plffs atty, Same.

29138. The United States of America *vs.* Ezra L. Stevens et al. Bond, $1,500. Plffs atty, John B. Hoge.

November 21.

29139. Henry P. Gilbert *vs.* The Potomac Dredging Co. et al. Notes, $1,525. Plffs atty, F. W. Jones.

November 22.

29140. Lewis Johnson & Co. *vs.* William A. Mathewson. Account, $161.26. Plffs attys, Wilmarth and Barthel.

November 23.

29141. Marvin Eastwood *vs.* Seigelay C. Elliott et al. Judgment of Justice Walter, $100.

29142. Same *vs.* S. Thompson, Jr., et al, Judgment of Justice Walter, 59.06.

29143. Same *vs.* Same. Judgment of Justice Walter, $82.30.

29144. Same *vs.* M. H. Johnston et al. Judgment of Justice Walter, $51.95.

29145. Same *vs.* Alex. J. Kane et al. Judgment of Justice Walter, $100.

29146. G. W. & H. W. Offutt *vs.* Frank A. Gray et al. Note, $468.37. Plffs atty, W. S. Jackson.

29147. Mary A. Ellis, trading as John F. Ellis & Co., *vs.* Elizzie Betters. Replevin. Plffs atty, John F. Ennis.

November 24.

29148. William H. White, use of Richard J. Collins, *vs.* The Young Men's Island Stock Co. Judgment of Justice Harper, $75.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 21st, 1888.

In the matter of the Estate of **John H. Barker**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased having been made by Julia A. Barker.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
48 W. W. Boarman, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. Richards et al. *vs.* C. Medford et al. } 11036 and 11170 consolidated. Equity Docket 28.

The trustees herein, A. B. Duvall, J. H. Marr and A. B. Williams, having reported to the Court the following bids of Samuel Ross, viz.: the sum of $650 for each of the sub-lots 40, 41, 44, 45, 46 and 52, in square 640; the sum of $660 for sub-lot 43, in said square; the sum of $590 for each of the sub-lots 49 and 51, in said square; the sum of $580 for sub-lot 50, in said square; the sum of $585 for sub-lot 48, in said square, and the sum of $575 for sub-lot 47, in said square, aggregating $8,130, it is, by the Court, this 31st day of October, A. D. 1888, ordered that said bids be accepted by said trustees, and that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of November next.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
45 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel W. Gottwals**, late of the District of Columbia, deceased.

All persons having claims agninst the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 22d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of November, 1888.

EMILY K. GOTTWALS.
DAVID B. GOTTWALS.
439 Warner st. n. w.
48 No. 3288. Ad. D. 14. L. Cabell Williamson, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of November, 1888.

Hattie V. Turner *vs.* George Turner. } No. 11369. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. Guilford White, her solicitor, it is ordered that the defendant, **George Turner**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the grounds of habitual drunkenness, desertion and non-support.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS Clerk, &c.
48 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Howard L. Hyatt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of November, 1888.

MARY E. HYATT, Ex'x, 233 G st. n. w.
48 No. 3297. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Milford F. Lackey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of November, 1888.

MARGARETTA LACKEY, Ex'x, 127 Md. ave. n. e.
48 No. 3296. Ad. D. 14. Wm. W. Boarman, Proctor.
4

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THE COURTS.

SUPREME COURT OF THE UNITED STATES

November 12.

Irving D. Hanscom, of Marquette, Mich., and Frank P. Clark, of Baltimore, were admitted to practice.

42. Bundy *vs.* Cocke. Decree reversed with costs and cause remanded.

6. Original. Ex parte: In the matter of David S. Terry, petitioner. Petition for writ of habeas corpus denied.

41. Ridings et al. *vs.* Johnson, executor, et al. Decree reversed with costs and cause remanded.

846. The U. S., appellant, *vs.* The Am. Bell Tel. Co. Decree reversed and cause remanded with directions to overrule the demurrer with leave to the defendants to plead or answer, or both, within a time to be fixed by that Court.

58. Jones *vs.* The East Tenn., Va. and Ga. R. R. Co. Judgment reversed with costs and cause remanded with directions to grant a new trial.

984. List *vs.* The Comm. of Penna Motion to advance granted and cause assigned for argument on the second Monday in January next.

1041. Hammond, appellant, *vs.* Hopkins et al. Motions to dismiss or require appellants to give a new appeal bond denied.

1245. The Chateaugay Ore and Iron Co. *vs.* Blake. Motion to dismiss or affirm denied.

29. The Central National Bank of Washington et al. *vs.* Hume et al., and No. 30. Hume et al. *vs.* Central Nat. Bank. Appeals from the Supreme Court of the District of Columbia. Decree affirmed in part and reversed in part. Opinion by Mr. Chief Justice Fuller.

1409. Jaehne *vs.* The People of the State of New York. Decree affirmed with costs.

1282. The Pac. Postal Tel. Cable Co. *vs.* O'Connor. Motion to dismiss submitted.

1032. The Fire Ins. Asso. (limited), *vs.* Wickham, Jr., et al. Motion to dismiss submitted.

73. Meissner et al. *vs.* Breen, master, &c. Argument continued.

SUPREME COURT OF THE D. C.

GENERAL TERM.

November 12.

Pollok *vs.* Commissioner of Patents. Peremptory mandamus.

Kilbourn *vs.* Latta. Argument continued.

IN EQUITY.—New Suits.

November 3.

11423. Annie P. MaManus *vs.* Charles C. Duncanson et al. Injunction. Com. sol., A. C. Bradley.

11424. Daniel J. Hartigan *vs.* Joseph M. Kennedy et al., heirs of J. C. G. Kennedy, deceased. Com. sol., F. W. Jones.

November 5.

11425. Richard Johnson *vs.* Susan Johnson. For divorce. Com. sols., Birney & Birney.

11426. Robert A. Hooe *vs.* John J. Johnson. Injunction. Com. sol., A. Wylie.

November 6.

11427. ——— ———, alleged lunatic. Upon petition of ———. To appoint committee. Com. sol., H. W. Garnett.

11428. Logan Johnson *vs.* George O. Graham. To settle partnership, injunction and account. Com. sols., Storrs and Hewlett.

11429. Sophie McChesney, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee, &c. Com. sol., H. E. Davis.

11430. James Flanagan *vs.* Millard F. Halleck, administrator. For assignment. Com. sol., E. M. Marble.

11431. James G. Smith *vs.* Same. For assignment. Com. sol., Same.

November 7.

11432. Basil B. Earnshaw et al. *vs.* John Smith et ux. Judgment creditor's bill. Com. sol., F. T. Browning.

November 8.

11433. Florence Newton *vs.* John A. Newton. For divorce. Com. sol., C. Carrington.

11434. Thomas Somerville et al. *vs.* Edw. W. Dickerson, Jr. et al. To enforce mechanic's lien. Com. sol., A. K. Browne.

11435. Rebecca G. Dodge *vs.* Juliet A. Hoft. For injunction. Com. sol., B. F. Leighton.

November 9.

11436 Frank McWilliams et al. *vs.* William H. Flood et al. To appoint new trustee. Com. sol., D. O'C. Callaghan.

CIRCUIT COURT.—New Suits at Law.

November 2.

29074. Lewis Johnson & Co. *vs.* Caroline W. Morgan et al. Note, $400. Plffs attys, Carusi & Miller.

November 3.

29075. William W. Hill *vs.* J. B. Cralle et al. Certiorari. Deft atty, William G. Johnson.

29076. Wash. B. Williams *vs.* Francis L. Norton. Bill of exchange, &c., $561.78. Plffs attys, Worthington and Richardson.

November 5.

29077. Samuel Carson *vs.* George B. Clark. Account, $1,551.82. Plffs atty, F. H. Mackey.

29078. Charles T. Baker *vs.* William S. Sammons. Notes, $241.17. Plffs atty, T. H. Fitnam.

29079. Francis Miller *vs.* Leopold Luchs. Ejectment. Plffs atty, A. K. Browne.

29080. C. Stahl & Son *vs.* Bahmer & Hilton. Account, $167.70. Plffs attys, Edwards & Barnard.

November 7.

29081. E. G. Schafer & Co. *vs.* James C. Callahan et al. Account, $278.43. Plffs atty, John Ridout.

29082. Calab Snashall et al. *vs.* The Metropolitan R. R. Co. Damages, $5,000. Plffs atty, J. J. Darlington.

November 8.

29083. J. J. Johnson, trustee, *vs.* James A. Harrold et al. Ejectment. Plffs atty, J. J. Johnson.

November 9.

29084. Thomas McCann *vs.* George Stevens et al. Account, $332.40. Plffs atty, H. B. Moulton.

November 10.

29085. William H. Roberts, executor, *vs.* William L. Bramhall et al. Ejectment, Plffs atty, J. J. Darlington.

29086. Ryland & Brooks *vs.* William H. Roberts, executor. Account, $1,617.26. Plffs atty, F. W. Jones.

29087. Hubbard Bros. *vs.* W. F. Morse Account, $104.80. Prffs atty, Same.

29088. Salvedore Petrola *vs.* Vincent Petrola. Note, $212. Plffs attys, Riddle, Davis & Padgett.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Robert Nelson**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 31st day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 31st day of October, 1888.

IDA E. COLE, Adm'x, 321 7th st. n. e.

45 No. 3258. Ad. D. 14. Samuel C. Mills, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Absalom H. Markland**, late of the District of Columbia, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Martha Louise Markland, the widow.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 11 o'clock a. m., to show cause why Letters of Administation on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

46 Allan Rutherford, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 10th, 1888.

In the matter of the Estate of **Enoch Ridgway**, late of Washington, in the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters of Administration with the Will annexed on the Estate of the said deceased, has this day been made by Henrietta F. Ridgway.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters of Administration with the Will annexed on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
No. 3235. Ad. D. 14.
46 W. B. Snell and H. L. Prince, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of November, 1888.

Bartow L. Walker et al. vs. **Thomas D. Walker et al.** } No. 11258. Docket 28.

On motion of the plaintiff, by Mr. W. P. Bell, their solicitor, it is ordered that the defendant, **Thomas D. Walker**, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the sale of lot numbered seven (7), in square numbered eight hundred and thirty-four (834), whereof the plaintiffs are owners of one moiety; preliminary to which the writ *de lunatico inquirendo* to issue as to defendant Mary C. Walker.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of November, A. D. 1888.

Frances C. Jones vs. **John Jones et al.** } 11364. Eq. Doc. 28.

Hosea B. Moulton, the trustee herein, having reported a sale of the east half of sub-lot numbered forty-one (41), in square numbered three hundred and sixty-seven (367), in the City of Washington and District of Columbia, to James H. Marr, agent for John T. Arms, for one thousand and fifty dollars ($1,050), it is, this 9th day of November, A. D. 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 9th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

By the Court. W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk,
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Horace S. Johnston**, late of Washington, D. C., deceased.

Application for the Probate of the last Will and Testament and Codicil thereto annexed and for Letters Testamentary on the Estate of the said deceased, has this day been made by Thurston B. Johnston and Walter A. Johnston.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 11 o'clock a. m., to show cause why said Will and one Codicil thereto annexed should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 H. O. & R. Claughton, Proctors.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Salmon B. Colby**, late of the City of Brooklyn, New York, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Thomas U. Joyce, of New York City, N. Y.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next, at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased, should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER and the *Brooklyn Eagle*, of Brooklyn, N. Y., previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 No. 3277. Ad. D. 14. John Cruikshank, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 9th, 1888.

In the matter of the Estate of **Gustav Adolph Buchholz**, late of Germany, deceased.

Application for Letters of Administration on the Estate of the said deceased, has this day been made by Octavius Knight.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 1 o'clock p. m., to show cause why Letters of Administration on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 W. P. Bell, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Sitting in Equity, November 10, 1888.

Frank Hume vs. **Della B. Keefe et al.** } 11056. Eq. Doc. 28.

Upon consideration of the report of Ferdinand Schmidt and Neal T. Murray, trustees, it is, this 10th day of November, A. D. 1888, ordered that the sale of the real estate known as all of lot B and the east ten inches of lot A, in Wallach's subdivision of part of square 551, in Washington, D. C., to Della B. Keefe, for the sum of $2,845, be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, 1888.

Provided a copy of this order be published once a week for three successive weeks before said day in the WASHINGTON LAW REPORTER.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 14th, 1888.

In the matter of the Estate of **John H. Houston**, late of the District of Columbia, deceased.

Application for Letters of Administration d. b. n. on the Estate of the said deceased, has this day been made by Thomas Truxtun Houston, who prays that such letters may be granted to John F. Cox, Esq.

All persons interested are hereby notified to appear in this Court on Friday, the 30th day of November next at 11 o'clock a. m., to show cause why Letters of Administration d. b. n. on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
46 No. 6390. (Ad. D. 6.) Old Series.
Worthington & Heald, Proctors.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Walter L. Hospital, by his next friend, Charles H. Demar, vs. Charles H. Hospital et al. } 11360. Equity Docket 28.

Charles H. Cragin, the trustee appointed by decree passed in this cause to sell part of lot 6, in Thomas Brown's subdivision of Lee's Hill, situated in Georgetown, District of Columbia, as described in the bill of complaint, having reported to the Court that, after complying with the terms of said decree, he offered for sale at public auction, in front of the premises, on October 20th, 1888, said real estate, and that David Auld became the purchaser thereof, at and for the sum of fifteen hundred and sixty-five dollars, it is, by the Court, this 31st day of October, 1888, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of December, 1888.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER before said date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
45 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of November, A. D. 1888.

Marion B. Sheridan, Plaintiff, vs. Alonzo A. Marr, Matthew Goddard, John T. Armes, Defendants. } Eq. No. 11366. Docket 28.

On motion of the plaintiff, by Messrs. Walter H. Acker and Campbell W. Bushnell, her attorneys, it is ordered that the defendants cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to divest Alonzo A. Marr of all right, title or interest as trustee under a certain deed of trust executed on the nineteenth day of October, A. D. 1883, and recorded in Liber 1055, Folio 392, of the Recorder of Deed's Office of the District of Columbia, and for the appointing of a new trustee in place and stead of the said Alonzo A. Marr.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
45 By H. W. HODGES, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John A. Boland et al. vs. Catharine M. Boland. } No. 11389. Equity.

Job Barnard, the trustee herein, having reported a sale of part of lots 21 and 22, in square 625, in the City of Washington, in the District of Columbia, to John Burns, for $2,290, it is, this 7th day of November, 1888, ordered that said sale be confirmed on the 7th day of December, 1888, unless cause to the contrary be shown before that day.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
45 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 7th of November, 1888.

Hattie V. Turner vs. George Turner. } No. 11389. Docket 28.

On motion of the plaintiff, by Mr. J. Guilford White, his solicitor, it is ordered that the defendant, George Turner, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the grounds of habitual drunkenness, desertion and non support.

Provided notice hereof be published once a week for three successive weeks in the *Washington Post* and the WASHINGTON LAW REPORTER.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
45 By M. A. CLANCY, Ass't Clerk.

Legal Blanks.

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10	Receipt,	1	6	40
11	Rent Receipt,	1	6	40
12	Promissory Note,	1	6	40
13	Deed of Trust Note,	1	6	40
14	Declaration: Common Counts,	3	25	1.75
15	" General,	5	50	3.50
16	Stock Transfer,	2	10	75
17	Acknowledgment: With Wife, *Clerk's Certificate*,	3	25	1.75
18	Acknowledgment: Single, *Clerk's Certificate*,	3	25	1.75
19	Acknowledgment: With Wife,	3	25	1.75
20	" Single,	3	25	1.75
21	Notice of Trial,	2	10	75
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WASHINGTON, D. C., - - DECEMBER 5, 1888

SUPREME COURT OF THE UNITED STATES.

THE CENTRAL NATIONAL BANK OF WASHINGTON CITY *et al.*, *Appellants*,
vs.
ANNIE G. HUME *et al.*

ANNIE G. HUME, *Appellant*,
vs.
THE CENTRAL NATIONAL BANK OF WASHINGTON CITY *et al.*

Appeals from the Supreme Court of the District of Columbia.

Decided November 12, 1888.

1. The provisions of the Statute, 13 Elizabeth, c. 5, were to prevent debtors from dealing with their property in any way to the prejudice of their creditors; but dealing with that which creditors, irrespective of such dealing, would not have touched is within neither the letter nor the spirit of the Statute.
2. A wife and children have an insurable interest in the life of the husband and father, and where a contract of insurance is made upon such interest, the husband and father can exercise no disposition over the same without their consent, while they are living, nor has he any interest therein of which he can avail himself, nor upon his death have his personal representatives or his creditors any interest in the proceeds of such contract which belong to the beneficiaries to whom they are payable.
3. Where a husband while insolvent insures his life in favor of his wife the premiums paid for such insurance cannot be recovered by his creditors from the insuring company, unless fraud on the part of the latter can be shown.
4. A debtor may rightfully preserve his family from suffering and want, and the same public policy which justifies this, and recognizes the support of wife and children as a positive obligation in law, as well as morals, justifies him in devoting a moderate portion of his earnings to keep on foot a security for their support after his death. Therefore, in the absence of fraud, moderate premiums paid by an insolvent upon policies of insurance for the benefit of his wife and children will not be considered as disposing of property to the prejudice of his creditors and cannot be recovered by them after his death out of the proceeds of the policies.

WALTER D. DAVIDGE, R. ROSS PERRY and EDWARDS & BARNARD, for creditors and administrators.

ENOCH TOTTEN and GORDON & GORDON, for Mrs. Hume and her children.

On the 23d of April, 1872, in consideration of an annual premium of $230.89, the Life Insurance Company of Virginia issued at Petersburgh, in that Commonwealth, a policy of insurance on the life of Thomas L. Hume, of Washington, D. C., for the term of his natural life, in the sum of $10,000, for the sole use and benefit of his wife, Annie Graham Hume, and his children, payment to be made to them, their heirs, executors, or assigns, at Petersburgh, Virginia.

The charter of the company provided as follows: "Any policy of insurance issued by the Life Insurance Company of Virginia on the life of any person, expressed to be for the benefit of any married woman, whether the same be effected originally by herself or her husband, or by any other person as aforesaid, shall enure for her sole and separate use and benefit and hat of her or husband's children, if any, as may be expressed in said policy, and shall be held by her free from the control or claim of her husband or his creditors, or of the person effecting the same and his creditors." (Sec. 7.)

The application for this policy was made on behalf of the wife and children by Thomas L. Hume, who signed the same for them.

The premium of $230.89 was reduced by annual dividends of $34.71 to $196.18, which sum was regularly paid on the 23d of April, 1872, and each year thereafter, up to and including the 23d of April, 1881.

On the 28th of March, 1880, the Hartford Life and Annuity Company of Hartford, Connecticut, issued five certificates of insurance upon the life of Thomas L. Hume, of $1,000 each, payable at Hartford to his wife, Annie G. Hume, if living, but otherwise to his legal representatives. Upon each of these certificates a premium of ten dollars was paid upon their issuance, amounting in all to $50, and thereafter certain other sums, amounting at the time of the death of Hume to $41.25.

On the 17th of February, 1881, the Maryland Life Insurance Company of Baltimore issued, at Baltimore, a policy of insurance upon the life of Thomas L. Hume, in the sum of $10,000, for the term of his natural life, payable in the City of Baltimore to "the said insured, Annie G. Hume, for her sole use, her executors, administrators or assigns;" the said policy being issued, as it recites on its face, in consideration of the sum of $337.20 to them duly paid by said Annie G. Hume, and of an annual premium of the same amount to be paid each year during the continuance of the policy. The application for this policy was signed "Annie G. Hume, by Thomas L. Hume," as is a recognized usage in such applications and in accordance with instructions to that effect printed upon the policy.

The charter of the Maryland Life Insurance Company provides as follows: "Section 17. That it shall be lawful for any married woman, by herself or in her name or in the name of any third person, with his consent, as her trustee, to be caused to be insured in said company, for her sole use, the life of her husband, for any definite period or for the term of his natural life, and in case of her surviving her husband the sum or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her to and for her own use, free from the claims of the representatives of her husband or of any of his creditors. In case of the death of the wife before the decease of the husband, the amount of the insurance may be made payable, after the death of the husband, to her children, or, if under age, to their guardian, for their use; in the event of

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there being no children, she may have power to devise, and if dying intestate, then to go [to] the next of kin."

The directions printed on the margin of the policy called especial attention to the provisions of the charter upon this subject, an extract from which was printed on the fourth page of the application. The amount of premium paid on this policy was $242.26, a loan having been deducted from the full premium of $337.20.

On the 13th of June, 1881, the Connecticut Mutual Life Insurance Company, of Hartford, in consideration of an annual premium of $350.30, to be paid before the day of its date, issued a policy of insurance upon the life of Thomas L. Hume, in the sum of $10,000, for the term of his natural life, payable at Hartford, to Annie G. Hume and her children by him, or their legal representatives. The application for this policy was signed "Annie G. Hume, by Thomas L. Hume." It was expressly provided, as part of the contract, that the policy was issued and delivered at Hartford, in the State of Connecticut, and was "to be in all respects construed and determined in accordance with the laws of that State."

The "statute of Connecticut respecting policies of insurance issued for the benefit of married women" was printed upon the policy under that heading, and is as follows: "Any policy of life insurance expressed to be for the benefit of a married woman, or assigned to her or in trust for her, shall inure to her separate use, or, in case of her decease before payment, to the use of her children or of her husband's children, as may be provided in such policy: *Provided*, That, if the annual premium on such policy shall exceed three hundred dollars, the amount of such excess, with interest, shall inure to the benefit of the creditors of the person paying the premiums; but if she shall die before the person insured, leaving no children of herself or husband, the policy shall become the property of the person who has paid the premiums, unless otherwise provided in such policy;" and this extract from the statute was printed upon the policy and attention directed thereto. From the $350.30 premium the sum of $105 was deducted, to be charged against the policy in accordance with its terms, with interest, and $245.30 was, therefore, the sum paid.

The American Life Insurance and Trust Company of Philadelphia had also issued a policy in the sum of $5,000 on the life of Hume, payable to himself or his personal representatives, and this was collected by his administrators.

Thomas L. Hume died at Washington, on the 23d of October, 1881, insolvent, his widow, Annie G. Hume, and six minor children surviving him.

November 2d, 1881, the Central National Bank of Washington, as the holder of certain promissory notes of Thomas L. Hume, amounting to several thousand dollars, filed a bill in the Supreme Court of the District of Columbia against Mrs. Hume and the Maryland Life Insurance Company, the case being numbered 7906, alleging that the policy issued by the latter was procured while Hume was insolvent; that Hume paid the premium of $242.26 without complainant's knowledge or consent, and for the purpose of hindering, delaying and defrauding the complainant and his other creditors; and praying for a restraining order on the insurance company from paying to, and Mrs. Hume from receiving, either for herself or children, the amount due pending the suit, and "that the amount of the said insurance policy may be decreed to be assets of said Thomas L. Hume applicable to the payment of debts owing by him at his death," etc. The temporary injunction was granted.

On the 12th of November, the insurance company filed its answer to the effect that Mrs. Hume obtained the insurance in her own name, and was entitled under the policy to the amount thereof, and setting up and relying upon the 17th section of its charter, quoted above. Mrs. Hume answered, November 16, declaring that she applied for and procured the policy in question, and that it was not procured with fraudulent intent; that the estate of her father, A. H. Pickrell, who died in 1879, was the largest creditor of Hume's estate; that she is her father's residuary legatee; that the amount of the policy was intended not only to provide for her, but also to secure her against loss; that her mother had furnished Hume with about a thousand dollars annually to be used for her best interests, and that of his wife and children; and that the premium paid on the policy in question and those paid on other policies, was and were paid out of money belonging to her father's estate, or out of the money of her mother applied as directed and requested by the latter.

Benjamin U. Keyser, receiver, holding unpaid notes of Hume, was allowed, by order of Court, November 16, 1881, to intervene as co-complainant in the cause.

R. Ross Perry and Reginald Fendall were appointed, November 26, 1881, Hume's administrators.

On January 23, 1882, the administrators filed three bills (and obtained injunctions) against Mrs. Hume and each of the other insurance companies, being cases numbered 8011, 8012 and 8013, attacking each of the policies (except the American) as a fraudulent transfer by an insolvent of assets belonging to his creditors.

The answers of Mrs. Hume were substantially the same *mutatis mutandis* as above given, and so were the answers of the Connecticut Mutual and the Virginia Life, the former pleading the statute of Connecticut as part of its policy and the latter the seventh section of its charter.

The Hartford Life and Annuity Company did not answer, and the bill to which it was a party defendant was taken *pro confesso*.

The administrators were, by order of Court, January 2, 1883, admitted parties defendant to said first case numbered 7906, and cases numbered 8011, 8012 and 8013 were consolidated with that case.

January 4, 1883, the Court entered a decretal order, dissolving the restraining order in original cause numbered 8012, and directing the Virginia Insurance Company to pay the amount due upon its policy into Court, and the clerk of the Court to pay the same over to Mrs. Hume, for her own benefit and as guardian of her children (which was done accordingly), and continuing the injunctions in original causes 8011, 8013 and 7906, but ordering the other in-

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surance companies to pay the amounts due into the registry of the Court.

By order of Court, January 30, 1883, the Farmers' and Mechanics' National Bank of Georgetown, which had proved up a large claim against Hume's estate, was allowed to intervene in orginal cause No. 7906 as a co-complainant; and March 19, 1883, George W. Cochran, a creditor, was by like order allowed to intervene as co-complainant in the consolidated cases.

Replications were filed and testimony taken on both sides.

The evidence tends to show that Hume's financial condition as early as 1874 was such that if called upon to respond on the instant, he could not have met his liabilities, and that this condition grew gradually worse until it culminated in irretrievable ruin in the fall of 1881; but it also indicates that for several years, and up to October 21, 1881, two days before his death, he was a partner in a going concern apparently of capital and credit; that he had a considerable amount of real estate, though most of it was heavily encumbered; that he was an active business man, not personally extravagant; and that he was, for two years prior to October, in receipt of moneys from his wife's mother, who had an income from her separate property.

He seems to have received from Mrs. Pickrell, or the estate of Pickrell, his wife's father, of which Mrs. Hume was the residuary legatee, over six thousand dollars in 1879, over three thousand dollars in 1880, and over seventeen hundred dollars in 1881.

Mrs. Pickrell's fixed income was one thousand dollars a year from rents of her own property, which, after the death of her husband in May, 1879, was regularly paid over to Mr. Hume. She testifies that she told Hume that "he could use all that I [she] had for his own and his family's benefit, and that he could use it for anything he thought best;" that she had out of it herself from $200 to $250 a year from the death of Pickrell, in May, 1879, to that of Hume, in October, 1881, and that before his death Mr. Hume informed his wife and herself that he had insured his life for Mrs. Hume's benefit but did not state where the premium money came from.

Blackford, agent for the Maryland company, testified, under objection, that Hume told him in February, 1881, that certain means had been placed in his hands, to be invested for his wife and children, and he had concluded to take $10,000 in Blackford's agency, and should, some months later, take $10,000 in the Connecticut Mutual. He accordingly took the $10.000 in the Maryland, and subsequently, during the summer, informed Blackford that he had obtained the insurance in the Connecticut Mutual.

Evidence was also adduced that Mr. Hume was largely indebted to Pickrell's estate, by reason of endorsements of his paper by Pickrell, and the use by him in raising money of securities belonging to the latter, and that said estate is involved in litigation and its ultimate value problematical.

The causes were ordered to be heard in the first instance at a General Term of the Supreme Court of the District of Columbia, which Court, after argument, on the 5th day of January, 1885, decreed that the administrators should recover all sums paid by Thomas L. Hume as premiums on all said policies, including those on the Virginia policy from 1874, and that after deducting said premiums the residue of the money paid into Court (being that received from the Maryland and the Connecticut Mutual) be paid to Mrs. Hume individually, or as guardian for herself and children, and that the Hartford Life and Annuity Company pay over to her the amount due on the certificates issued by it.

From this decree the said Central National Bank, Benjamin U. Keyser, the Farmers and Mechanics' National Bank of Georgetown, George W. Cochran, and the administrators, as well as Mrs. Hume, appealed to this Court, and the cause came on to be heard here upon these cross-appeals.

MR. CHIEF JUSTICE FULLER, after stating the case, delivered the opinion of the Court:

No appeal was prosecuted from the decree of January 4, 1883, directing the amount due upon the policy issued by the Life Insurance Company of Virginia to be paid over to Mrs. Hume for her own benefit and as guardian of her children, nor is any error now assigned to the action of the Court in that regard. Indeed, it is conceded by counsel for the complainants that this contract was perfectly valid as against the world, but it is insisted that, assuming the proof to establish the insolvency of Hume in 1874, and thenceforward, the premiums paid in that and the subsequent years on this policy belonged in equity to the creditors, and that they were entitled to a decree therefor as well as for the amount of the Maryland and Connecticut policies and premiums paid thereon.

It is not denied that the contract of the Maryland Insurance Company was directly between that company and Mrs. Hume, and this is, in our judgment, true of that of the Connecticut Mutual, while the Hartford company's certificates were payable to her, if living.

Mr. Hume having been insolvent at the time the insurance was effected, and having paid the premiums himself, it is argued that these policies were within the provisions of 13 Elizabeth, c. 5, and inure to the benefit of his creditors as equivalent to transfers of property with intent to hinder, delay and defraud. The object of the statute of Elizabeth was to prevent debtors from dealing with their property in any way to the prejudice of their creditors; but dealing with that which creditors, irrespective of such dealing, could not have touched, is within neither the letter nor the spirit of the statute. In the view of the law, credit is extended in reliance upon the evidence of the ability of the debtor to pay, and in confidence that his possessions will not be diminished to the prejudice of those who trust him. This reliance is disappointed, and this confidence abused, if he divests himself of his property by giving it away after he has obtained credit. And where a person has taken out policies of insurance upon his life for the benefit of his estate, it has been frequently held that, as against creditors, his assignment, when insolvent, of such policies, to or for the benefit of wife and children, or either, constitutes a fraudulent transfer of assets within the statute, and this, even though the debtor may have had no deliberate intention of depriving his creditors

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of a fund to which they were entitled, because his act has in point of fact withdrawn such a fund from them, and dealt with it by way of bounty. Freeman *vs.* Pope, L. R., 9 Eq., 206; S. C., L. R., 5 Ch., Ap., 538. The rule stands upon precisely the same ground as any other disposition of his property by the debtor. The defect of the disposition is that it removes the property of the debtor out of the reach of his creditors. Cornish *vs.* Clark, L. R., 14 Eq., 189.

But the rule applies only to that which the debtor could have made available for payment of his debts. For instance, the exercise of a general power of appointment might be fraudulent and void under the statute, but not the exercise of a limited or exclusive power, because, in the latter case, the debtor never had any interest in the property himself which could have been available to a creditor, or by which he could have obtained credit. May on Fraudulent Conveyances, p. 33. It is true that creditors can obtain relief in respect to a fraudulent conveyance where the grantor cannot, but that relief only restores the subjection of the debtor's property to the payment of his indebtedness as it existed prior to the conveyance.

A person has an insurable interest in his own life for the benefit of his estate. The contract affords no compensation to him, but to his representatives. So the creditor has an insurable interest in the debtor's life, and can protect himself accordingly, if he so chooses. Marine and fire insurance is considered as strictly an indemnity; but while this is not so as to life insurance, which is simply a contract, so far as the company is concerned, to pay a certain sum of money upon the occurrence of an event which is sure at some time to happen, in consideration of the payment of the premiums as stipulated, nevertheless the contract is also a contract of indemnity. If the creditor insures the life of his debtor, he is thereby indemnified against the loss of his debt by the death of the debtor before payment; yet, if the creditor keeps up the premiums, and his debt is paid before the debtor's death, he may still recover upon the contract, which was valid when made, and which the insurance company is bound to pay according to its terms; but if the debtor obtains the insurance on the insurable interest of the creditor, and pays the premiums himself, and the debt is extinguished before the insurance falls in, then the proceeds would go to the estate of the debtor. Knox *vs.* Turner, L. R., 9 Eq., 155.

The wife and children have an insurable interest in the life of the husband and father, and if insurance thereon be taken out by him and he pays the premiums and survives them, it might be reasonably claimed, in the absence of a statutory provision to the contrary, that the policy would inure to his estate.

In Continental Life Ins. Co. *vs.* Palmer, 42 Conn., 60, the wife insured the life of the husband, the amount insured to be payable to her if she survived him, if not, to her children. The wife and one son died prior to the husband, the son leaving a son surviving. The Court held that under the provisions of the statute of that State, the policy being made payable to the wife and children, the children immediately took such a vested interest in the policy, that the grandson was entitled to his father's share, the wife having died before the husband, but that in the absence of the statute "it would have been a fund in the hands of his representatives for the benefit of the creditors, provided the premiums had been paid by him." So, in the case of Anderson's Estate, Hay's and Kerr's Appeal, 85 Pa. St. 202, A insured his life in favor of his wife, who died intestate in his lifetime, leaving an only child. A died intestate and insolvent, the child surviving, and the Court held that the proceeds of the policy belonged to the wife's estate, and, under the intestate laws, was to be distributed share and share alike between her child and her husband's estate, notwithstanding, under a prior statute, life insurance taken out for the wife vested in her free from the claims of the husband's creditors. But if the wife had survived she would have taken the entire proceeds.

We think it cannot be doubted that in the instance of contracts of insurance with a wife or children, or both, upon their insurable interest in the life of the husband or father, the latter, while they are living, can exercise no power of disposition over the same without their consent, nor has he any interest therein of which he can avail himself, nor upon his death have his personal representatives or his creditors any interest in the proceeds of such contracts, which belong to the beneficiaries to whom they are payable.

It is indeed the general rule that a policy, and the money to become due under it, belong, the moment it is issued, to the person or persons named in it as the beneficiary or benficiaries, and that there is no power in the person procuring the insurance, by any act of his, by deed or by will, to transfer to any other person, the interest of the person named. Bliss on Life Insurance, 2d ed., p. 517; Glanz *vs.* Gloeckler, 10 Appellate Court Ill., 486, per McAllister, J.; S. C., 104 Ill., 573; Willburn *vs.* Willburn, 83 Ind. 55; Ricker *vs.* Charter Oak Ins. Co., 27 Minn., 193; Charter Oak Life Ins. Co. *vs.* Brent, 47 Mo., 419; Gould *vs.* Emerson, 99 Mass., 154; Knickerbocker Life Ins. Co. *vs.* Weitz, *Id.*, 157.

This must ordinarily be so where the contract is directly with the beneficiary; in respect to policies running to the person insured, but payable to another having a direct pecuniary interest in the life insured; and where the proceeds are made to enure by positive statutory provisions.

Mrs. Hume was confessedly a contracting party to the Maryland policy; and as to the Connecticut contracts, the statute of the State where they were made and to be performed, explicitly provided that a policy for the benefit of a married woman shall enure to her separate use or that of her children, but if the annual premium exceed three hundred dollars, the amount of such excess shall enure to the benefit of the creditors of the person paying the premiums.

The rights and benefits given by the laws of Connecticut in this regard are as much part of these contracts as if incorporated therein, not only because they are to be taken as if entered into there, but because there was the place of performance, and the stipulation of the parties

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was made with reference to the laws of that place.

And if this be so as between Hume and the Connecticut companies, then he could not have at any time disposed of these policies without the consent of the beneficiary. Nor is there anything to the contrary in the statutes or general public policy of the District of Columbia.

It may very well be that a transfer by an insolvent of a Connecticut policy, payable to himself or his personal representatives, would be held invalid in that District, even though valid under the laws of Connecticut, if the laws of the District were opposed to the latter, because the positive laws of the domicil and the forum must prevail; but there is no such conflict of laws in this case in respect to the power of disposition by a person procuring insurance payable to another.

The obvious distinction between the transfer of a policy taken out by a person upon his insurable interest in his own life, and payable to himself or his legal representatives, and the obtaining of a policy by a person upon the insurable interest of his wife and children, and payable to them, has been repeatedly recognized by the courts.

Thus in Elliott's Appeal, 50 Pa. State R., 75, where the policies were issued in the name of the husband, and payable to himself or his personal representatives, and while he was insolvent were by him transferred to trustees for his wife's benefit, the Supreme Court of Pennsylvania, while holding such transfers void as against creditors, say:

"We are to be understood in thus deciding this case, that we do not mean to extend it to policies effected without fraud directly and on their face for the benefit of the wife, and payable to her; such policies are not fraudulent as to creditors, and are not touched by this decision."

In the use of the words, "without fraud," the Court evidently means actual fraud participated in by all parties, and not fraud inferred from the mere fact of insolvency; and, at all events, in McCutchin's Appeal, 99 Pa. State R., p. 137, the Court say, referring to Elliott's appeal:.

"The policies in that case were effected in the name of the husband, and by him transferred to a trustee for his wife at a time when he was totally insolvent. They were held to be valuable choses in action, the property of the assured, liable to the payment of his debts, and hence their voluntary assignment operated in fraud of creditors, and was void as against them under the Statute of 13th Elizabeth. Here, however, the policy was effected in the name of the wife, and in point of fact was given under an agreement for the surrender of a previous policy for the same amount also issued in the wife's name." * * * "The question of good faith or fraud only arises in the latter case; that is, when the title of the beneficiary arises by assignment. When it exists by force of an original issue in the name or for the benefit of the beneficiary, the title is good, notwithstanding the claims of creditors. * * * There is no anomaly in this, nor any conflict with the letter or spirit of the Statute of Elizabeth, because in such cases the policy would be at no time the property of the assured, and hence no question of fraud in its transfer could arise as to his creditors. It is only in the case of the assignment of a policy that *once belonged* to the assured that the question of fraud can arise under this act."

And see Ætna National Bank *vs.* U. S. Life Ins. Co., 24 Fed. Rep., 770; Pence *vs.* Makepeace, 65 Ind., 374; Succession of Hearing, 26 La. Ann. R., 326; Stigler's Ex'r *vs.* Stigler, 77 Va., 163; Thompson *vs.* Cundiff, 11 Bush, 567.

Conceding, then, in the case in hand, that Hume paid the premiums out of his own money, when insolvent, yet, as Mrs. Hume and the children survived him, and the contracts covered their insurable interest, it is difficult to see upon what ground the creditors, or the administrators as representing them, can take away from these dependent ones that which was expressly secured to them in the event of the death of their natural supporter. The interest insured was neither the debtors nor his creditors. The contracts were not payable to the debtor, or his representatives, or his creditors. No fraud on the part of the wife, or the children, or the insurance company, is pretended. In no sense was there any gift or transfer of the debtor's property, unless the amounts paid as premiums are to be held to constitute such gift or transfer. This seems to have been the view of the Court below, for the decree awarded to the complainants the premiums paid to the Virginia company from 1874 to 1881, inclusive, and to the other companies from the date of the respective policies. amounting, with interest, to January 4, 1883, to the sum of $2,696.10, which sum was directed to be paid to Hume's administrators out of the money which had been paid into Court by the Maryland and Connecticut Mutual Companies.

But, even though Hume paid this money out of his own funds when insolvent, and if such payment were within the Statute of Elizabeth, this would not give the creditors any interest in the proceeds of the policies, which belonged to the beneficiaries for the reasons already stated.

Were the creditors, then, entitled to recover the premiums?

These premiums were paid by Hume to the insurance companies, and to recover from them would require proof that the latter participated in the alleged fraudulent intent, which is not claimed. Cases might be imagined of the payment of large premiums, out of all reasonable proportion to the known or reputed financial condition of the person paying, and under circumstances of grave suspicion, which might justify the inference of fraud on creditors in the withdrawal of such an amount from the debtor's resources; but no element of that sort exists here.

The premiums form no part of the proceeds of the policies, and cannot be deducted therefrom on that ground.

Mrs. Hume is not shown to have known of or suspected her husband's insolvency, and if the payments were made at her instance, or with her knowledge and assent, or if, without her knowledge, she afterwards ratified the act, and clamed the benefit, as she might rightfully do (Thompson *vs.* Amer. Ins. Co., 46 N. Y., 675), and as she does (and the same remarks apply to the children) then has she thereby received

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money which *ex æquo et bono* she ought to return to her husband's creditor's, and can the decree against her be sustained on that ground?

If in some cases payments of premiums might be treated as gifts inhibited by the statute of Elizabeth, can they be so treated here?

It is assumed by complainants that the money paid was derived from Hume himself, and it is therefore argued that to that extent his means for payment of debts were impaired. That the payments contributed in any appreciable way to Hume's insolvency, is not contended. So far as premiums were paid in 1880 and 1881 (the payments prior to those years having been the annual sum of $196.18 on the Virginia policy), we are satisfied from the evidence that Hume received from Mrs. Pickrell, his wife's mother, for the benefit of Mrs. Hume and her family, an amount of money largely in excess of these payments, after deducting what was returned to Mrs. Pickrell, and that in paying the premiums upon procuring the policies in the Maryland and the Connecticut Mutual, Hume was appropriating to that purpose a part of the money which he considered he thus held in trust, and we think that, as between Hume's creditor's and Mrs. Hume, the money placed in Hume's hands for his wife's benefit is, under the evidence, equitably as much to be accounted for to her by Hume, and so by them, as is the money paid on her account to be accounted for by her to him or them.

We do not, however, dwell particularly upon this, nor pause to discuss the bearing of the laws of the States of the insurance companies upon this matter of the payment of premiums by the debtor himself, so far as they may differ from the rule which may prevail in the District of Columbia, in the absence of specific statutory enactment upon that subject, because we prefer to place our decision upon broader grounds.

In all purely voluntary conveyances it is the fraudulent intent of the donor which vitiates. If actually insolvent, he is held to knowledge of his condition; and if the necessary consequence of his act is to hinder, delay or defraud his creditors, within the statute, the presumption of the fraudulent intent is irrebuttable and conclusive, and inquiry into his motives is inadmissible.

But the circumstances of each particular case should be considered, as in Partridge *vs.* Gopp, 1 Eden, 163; S. C., Ambl., 596, where the Lord Keeper, while holding that debts must be paid before gifts are made, and debtors must be just before they are generous, admitted that "the fraudulent intent might be collected from the magnitude and value of the gift."

Where fraud is to be imputed, or the imputation of fraud repelled, by an examination into the circumstances under which a gift is made to those towards whom the donor is under natural obligation, the test is said, in Kiff *vs.* Hanna, 2 Bland, 33, to be the pecuniary ability of the donor at that time to withdraw the amount of the donation from his estate without the least hazard to his creditors, or in any material degree lessening their then prospects of payment; and in considering the sufficiency of the debtor's property for the payment of debts, the probable, immediate, unavoidable and reasonable demands for the support of the family of the donor should be taken into the account and deducted, having in mind also the nature of his business and his necessary expenses. Emerson *vs.* Bemis, 69 Ill., 541.

This argument in the interest of creditors concedes that the debtor may rightfully preserve his family from suffering and want. It seems to us that the same public policy which justifies this, and recognizes the support of wife and children as a positive obligation in law as well as morals, should be extended to protect them from destitution after the debtor's death, by permitting him, not to accumulate a fund as a permanent provision, but to devote a moderate portion of his earnings to keep on foot a security for support already, of which could thereby be, lawfully obtained, at least to the extent of requiring that, under such circumstances, the fraudulent intent of both parties to the transaction should be made out.

And inasmuch as there is no evidence from which such intent on the part of Mrs. Hume or the insurance companies could be inferred, in our judgment none of these premiums can be recovered.

The decree is affirmed, except so far as it directs the payment to the administrators of the premiums in question and interest, and, as to that, is reversed, and the cause remanded to the Court below, with directions to proceed in conformity with this opinion.

Ordered accordingly.

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE UNITED STATES *ex rel.* ANTHONY POLLOK
vs.
BENTON J. HALL, *Commissioner of Patents.*

No. 29,068. AT LAW.

Decided November 12, 1888.

The CHIEF JUSTICE, JUSTICES COX and MERRICK sitting.

1. Whenever a reasonable suggestion of its necessity for the purposes of evidence is made by the person requesting it, the Commissioner of Patents cannot lawfully refuse to furnish a certified copy of an abandoned or rejected application for a patent; the right to be furnished such a copy is given to the public by statute, and the refusal thereof entitles the applicant to the writ of *mandamus* against the Commissioner to compel a compliance with such request.
2. An attorney at law who has requested such a copy in behalf of his client and been refused has such an interest in the subject-matter as entitles him to commence proceedings in his own name as relator for the writ of *mandamus*.

Petition for *mandamus* against the Commissioner of Patents.

PHILLIP MAURO, for relator.

L. A. PALMER, for the Commissioner.

MR. JUSTICE MERRICK delivered the opinion of the Court:

The Court has had under consideration the application of Anthony Pollok for a writ of *mandamus* against the Commissioner of Patents to compel him to give a certified copy of a certain abandoned application for a patent remaining on file in the archives of that office.

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In response to that application, the Commissioner sets up that, while he considers that the relator is an attorney in the regular practice of his profession before the Patent Office, and that he is also in point of fact the attorney employed by the party in whose behalf he makes the application for the copy in question, he has no right to it.

First. Because he is not the party having the legal title to the subject-matter.

Second. That it does not appear that the paper is really requisite for the purposes of evidence in the alleged cause; and

Third. That under Rule 179 of the Patent Office the Commissioner of Patents has a discretion to grant or withhold information in that class of cases at his pleasure, or at his discretion—the terms as used, seem to be convertible.

In order to ascertain if there were just foundation for the refusal of the Commissioner of Patents, as well as to understand the scope of that refusal, it is proper for a moment to advert to first principles. For what was the Patent Office established? What was the design of its institution? And what rights does it protect? We know that at common law there was no such thing as a monopoly in an invention, or a monopoly in the use of knowledge which the party possessing it had once communicated in any manner to his fellow beings; that the revelations of thought and intellect are common property, and there is no monopoly or exclusive right in such things, except so far as they have been conferred by positive law; and positive law has never gone any farther to confer exclusive property in such things than for purposes of encouragement of science, and the development and advancement of art. That it may not be supposed that the court is for the first time announcing this as a general principle of the common law, though it is familiar to all lawyers, we refer to the language of the Supreme Court in the case of Gayler *vs.* Wilder, 10 Howard, 495, and read a certain passage from that opinion:

"Now, the monopoly granted to the patentee is for one entire thing; it is the exclusive right of making, using and vending to others to be used, the improvement he has invented and for which the patent is granted. The monopoly did not exist at common law, and the rights, therefore, which may be exercised under it cannot be regulated by the rules of the common law. It is created by the Act of Congress, and no rights can be acquired in it unless authorized by statute and in the manner the statute prescribes."

The authority for legislation on the subject is found in that clause of the Constitution which says "The Congress shall have power to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Here we find the entire scope of the right of exclusiveness, and as involved in the right of exclusiveness the entire scope of the right of secrecy. In pursuance of the above delegation of power, Congress has established the Patent Office, and has established certain rules and regulations with respect to it, and amongst those rules the only rule of secrecy is that which is made in aid of the inventor, who has not yet perfected his design, and which enables him to present an application to the proper authorities to secure his invention, and while he is using all diligence to confer upon the public the knowledge that he possesses, it gives him further opportunities to perfect his invention before he makes an application for a definitive patent. That limitation of the authority of publicity, that single grant of secrecy, is to be found in section 4,902 of the Revised Statutes, in these words:

"Any citizen of the United States who makes any new invention or discovery and desires further time to mature the same, may, on payment of the fees required by law, file in the Patent Office a caveat setting forth the design thereof and of its distinguishing characteristics, and praying protection of his right until he shall have matured his invention. Such caveat shall be filed in the confidential archives of the Office and preserved in secrecy and shall be operative for the term of one year from the filing thereof; and if application is made within the year by any other person for a patent with which said caveat would, in any manner, interfere, the Commissioner shall deposit the description, specification, drawings and model of such application in like manner in the confidential archives of the office and give notice thereof, &c."

That is the only qualification in regard to publicity which runs through the entire patent law, because you will find, not only from the general principles that have been spoken of, but also from the provisions of various sections of the patent law, that there is an obligation on the part of the officers of the Patent Office to make known, and to disseminate before the public the knowledge of all inventions. They are required by divers sections to publish from time to time and have printed and that, too—under seal so that they may be evidence in Courts of justice—volumes containing the specifications, descriptions and drawings of all patents that have been issued under the authority of the United States. (See sections 490, 491, R. S. U. S.)

Besides being required to make these public communications of knowledge for the benefit of mankind, to promote the progress of science and the useful arts, there is a section, 493, which makes it incumbent upon the Commissioner of Patents to give specific information, by uncertified copies, which goes on to say:

"The price to be paid for uncertified printed copies of specifications and drawings of patents shall be determined by the Commissioner of Patents, within the limits of ten cents as the minimum and fifty cents as the maximum price."

So that by this section of the law it is the right of any and every man to obtain an uncertified copy of specifications and drawings on file in the Patent Office at the minimum price to be fixed by law.

Besides that, and besides the general provision in regard to published copies of the proceedings in the Patent Office under seal, there is another provision in section 892 for certified copies in particular classes of cases:

"Written or printed copies of any records, books, papers or drawings belonging to the Patent Office, and of letters patent, authenticated by the seal and certified by the Commis-

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sioner or Acting Commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor and paying the fee required by law shall have certified copies thereof."

Now, the Commissioner of Patents, in his response to the present application of the relator, seeks to withdraw this case from the ordinary requirements of publicity and bring it within the special requirements of secrecy under section 4894, which is in these words:

. "All applications for patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable."

In connection with that clause of the statute they have promulgated a rule in the Patent Office, Rule 179, which is as follows:

"Copies of the files of rejected and abandoned applications may be furnished when ordered by the Commissioner. The requests for such copies must be presented in the form of a petition properly verified as to all matters not appearing of record in the Patent Office."

It is upon the construction of that rule, as compared with the clause of the statute that I have read, that the Commissioner seeks to maintain that he has a discretionary power to grant or refuse an application. Why? Is there anything in the law which I have read about the duration of time when an application may remain without abandonment that justifies the supposition that the right of secrecy shall attach to an application of that sort after it has lain in the Office during all the period provided by law? The statute expressly says that after it has lain in the Office the period provided by law (viz., two years) as an unperfected application, it shall be considered as abandoned unless there be good cause of delay shown, which is not in this case.

What is abandonment? The definition is given in the case which I have already quoted by one of the judges in part of one of the opinions there, that abandonment is a deduction to the public—that is to say, that the party has withdrawn himself from the claim of monopoly and exclusive use which he might have had for his invention, and notwithstanding whatever it may be worth, it thenceforth belongs to the public. It is abandoned to the public.

Now, when a thing has been dedicated to the use of the public, taken out of the special provisions contemplated in the monopoly in favor of an individual in derogation of the principles of the common law, the question arises, can the Commissioner of Patents assume a discretionary power to keep that in secret which belongs to the public, that which the inventor thought out, under the revelation of the Divine mind, and which has been consecrated to the use of mankind? It cannot be. And while the Commissioner of Patents has the right to make all just rules and regulations for the administration of his office, he has no right to make a rule which derogates from common right and deprives mankind of that which belongs to it as common property.

Then, according to the construction which has been indicated as flowing from these statutes, an application once made and filed in the Patent Office, belongs to the whole public, and, according to the scheme of the patent law, every thing placed in the Patent Office (completed or incompleted) belongs to the public, subject to the qualification of the individual rights of the applicant and patentee. Then has not every man a right in common to the benefit of that knowledge which is thus dedicated to the public?

It was urged in the argument that the Commissioner had a right to hold abandoned applications as part of the secret and confidential archives by reason of a decision of the Supreme Court in Brown *vs.* Guild, 23 Wallace, p. 181. All that the Supreme Court decided in that case as to abandoned applications was that an abandoned application stood upon the same level with an abandoned experiment, and did not constitute a bar within the terms of the patent law to the grant of a patent to a subsequent discoverer. They say in that case that "a mere application for a patent is not mentioned (in the statutes) as a bar. It can only have a bearing on the question of prior invention or discovery. If upon the whole of the evidence it appears that the alleged prior invention or discovery was only an experiment and was never *perfected*, or brought into actual use, but was abandoned and never revived by the alleged inventor, the *mere* fact of having unsuccessfully applied for a patent therefor can not take the case out of the category of unsuccessful experiments." But there is nothing in that decision which detracts from the right of the public to the knowledge which the applicant has by his abandonment placed at the disposal of the public. On the contrary, the Court recognizes distinctly that such application may have a bearing upon the question of prior invention. If, then, it be in the opinion of the Supreme Court a proper element of evidence when the question of prior invention or discovery arises, it must follow that the Commissioner of Patents cannot withhold the necessary information to be derived from the record of such application whenever it may reasonably be demanded for the purposes of evidence, as in the controversy now before us.

The only question that remains is whether an applicant for information thus withheld is entitled to the compulsory process of a court of justice to require the disclosure of that knowledge and possession of the proper evidences of that knowledge.

The writ of *mandamus*, being a prerogative writ, as it is called—one not to be granted upon light considerations—is yet a writ which belongs to every citizen where the law gives him no other remedy, and where it appears that he has a right which has been obstructed. To put a familiar case, before going on with the one under consideration, suppose an attorney at law, in the progress of his professional business and avocation, hath occasion to go to the office of the Recorder of Deeds for the purpose of investigating a title, or of gaining knowledge in

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respect to a title there of record, and the Recorder of Deeds refuses him permission to examine the records. Is it not clear that he is entitled to the benefit of the writ of *mandamus* for that purpose? Is not the right of the client, and is not also the right of the attorney at law employed by the client in the ordinary pursuit of his profession, violated so as to give him a substantial position in a court of justice to demand redress for the wrong which has been committed upon him?

Now, how does that case differ in substance from the application which has been made in this particular case? The relator sets forth that he is an attorney at law in the pursuit of his profession; that he has constant occasion to inspect and examine the records which are on file within the office of the Commissioner of Patents; that in this particular case he has been delegated by his client to obtain information in this particular case requisite for the purpose of a suit now pending between his client and the party interested or supposed to be interested in this application in the courts of France. Is it necessary under such circumstances that the client himself should apply for the writ of *mandamus*? It was argued here that no one except the person that had title to the property could make an application for a *mandamus*, that an attorney, as such, could not make the application for the writ. But the rights that have been spoken of which appertain to the attorney, *qua* attorney, and appertain to him individually, irrespective of any body else, show that he has a property of a sort in this case which a court of justice will protect, and that it is very different from the case which was relied upon in argument, where an attorney seeks a *mandamus* to compel an officer to issue a patent to a party for some subject-matter in which the party alone is interested. The attorney has no interest in the title to the property, and therefore cannot in the case supposed apply for and compel the issue of the *mandamus*, because he has no specific interest in the subject of the title. But in this case the attorney has specific interest, not in any distinctive title, but in a matter of property common to himself and all mankind, and in regard to which he has also, to a certain extent, what may be called a peculiar special property; the interest devolved upon him by his avocation of attorney in the proper prosecution of his professional rights and professional duties.

It seems, therefore, that the objection which is made by the Commissioner of Patents, upon the ground that the relator is not a party in interest having title to the property, does not avail when we consider the character and object of the application.

The Commissioner makes another objection, which is, that it does not appear to his satisfaction that the purpose for which it is wanted, (viz to be used in evidence in a case) is substantial because he does not see how the matter is to become evidence.

Now, the Court is of opinion that he is not placed in his position for any such purpose, and that it is sufficient that a reasonable suggestion of necessity for the use of a document for evidence be made, in order to set in motion his duty to furnish the copy. He is not there to sit as a judge in the controverted cause. If the suggestion be made by a reasonable person and under reasonable conditions, that suggestion should be conclusive upon him so far as the efficacy of the paper for the purposes of evidence is to be an element in the application, for a copy for the purposes of evidence, under the clause of the statute which has been read.

But in this case it should have been evident to the Commissioner of Patents, that it was his manifest duty to give the copy, for two reasons: It appears upon the face of the application, not only that it is wanted for the purposes of evidence, but that in point of fact, properly considered, the paper which is in question and which he denies access to, belongs to the public and is properly part and parcel of the patent with reference to the litigation about which the document has been wanted for purposes of evidence, for the reason that that rejected application and the descriptions of the matter contained in that rejected application, are made by reference part of the very specification of the patent in question; and, therefore, it was his duty, independent of the general requirement of furnishing a copy for the purposes of evidence, to have given that copy as part and parcel of the published patents and published specifications of the patent in question. Being incorporated into it by reference, it is in contemplation of law part and parcel of the specification of the patent, which patent, with its specifications, by the general provisions of law it is incumbent upon the Commissioner of Patents to publish to the world in the various modes which have been indicated, under the rules of the Patent Office which have been read. It will appear in the 75th paragraph of the specifications of Patent No. 279,717, which is the patent of the party in question, that he does incorporate this rejected application in these words:

"While the sides of the counter stiffeners will be pressed inward by the action of the mold J, to form what I term a 'reshaped unflanged counter,' substantially as shown and described by me in another application of even date herewith."

Which application "of even date h ewith" is the rejected application which he now refuses to permit anybody to have access to. Of course, any lawyer, reading that specification and seeing that it referred to the rejected application for the purpose of part of its description, and as a more full and complete identification of its subject-matter, and of the manner in which the subject-matter acts, will see that that rejected application is by contemplation of law a parcel of the specification, and, therefore, that the whole public is entitled to have what is in that rejected application in order to comprehend the nature of the specification in the patent which has been published; but the Commissioner of Patents (or, rather, we should say, in justification of the Commissioner of Patents personally, some subordinate in his office, because he has so many large duties that all these things have to be confided to subordinates, and, consequently, although the return is under his name it is probably at second hand), notwithstanding the quotations that have been made, in his return undertakes to justifies his refusal by a part of his return in which he says that he had referred the application to a subordinate, with this re-

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sult: that his refusal to order such copy to be furnished to the relator was in the following words:

"Examiner: Please report below, without delay, whether the abandoned application referred to in the letter attached contains any invention or matter not covered by patent No. 279,717.

(Signed) BENTON J. HALL."

Respectfully returned with remark that upon careful examination I am unable to find any legitimate connection between the patent No. 279,717 and the abandoned application referred to. The patent covers a machine for the manufacture of counter-stiffeners, without reference to the special configuration. The abandoned application describes as the alleged invention a counter-stiffener of definite construction, and incidentally states that it may be made by a method claimed in the patent, and may also be made by other methods. The patent and abandoned application stand clearly independent of each other.

(Signed) J. P. CHAPMAN,
Examiner Div. 11.

And then follows the rest of the communication:

"The within request is denied for the reason that the showing is insufficient wherein the abandoned application is material and important as evidence, and for the further reason that the Commissioner is advised by the Examiner that there is no legitimate connection between the patent No. 279,717 and the abandoned application referred to.

"(Signed) BENTON J. HALL,
"*Commissioner.*"

It seems, then, to have been on the above mistaken considerations that the Commissioner refused the application of the relator.

Without going any farther into the matter, it must be apparent, from the review that has been given, that the Commissioner is without legal ground of objection to the demand which has been made by the relator in the particular case, not only the general considerations referred to, but for the special reason deduced from the identity of the document itself, as one of the documents belonging to the public as parcel of patent and specification No. 279,717, and that the Commissioner should not have denied the application. And if the Commissioner had followed up the rules of his Office, to which he refers, with a just appreciation of the relation between those two documents, the one to the other, he would have been enabled to escape from the error into which he was led by inadvertence in this particular instance. Amongst other things in his return, he relies upon Rule 15, which is in these words:

"Caveats and pending applications are preserved in secrecy. No information will be given, without authority, respecting the filing by any particular person of a caveat or of an application for a patent or for the re-issue of a patent, the pendency of any particular case before the office, or the subject-matter of any particular application, unless it shall be necessary to the proper conduct of business before the office, as provided by rules 97, 103 and 108."

Now, if he had been enlightened as to the true nature of this application and the inter-dependence between these two documents, he would have found the following in the very next rule:

"16. After a patent has issued, the model, specification, drawings, and all documents relating to the case are subject to general inspection, and copies, except of the model, will be furnished at the rates specified in rule 218."

There was, therefore, his own rule 16, which shows that it was imperative upon him, under circumstances such as have been indicated, appertaining to this particular document and its relation to an existing patent, to have granted the application which he has refused. All this was, doubtless, from inadvertence upon the part of the Commissioner of Patents, and it is only justice to the Commissioner that the Court should say that he is not personally to have imputed to him any fault or misconduct, although, of course, he is held legally responsible for the acts of his subordinates. For these reasons, without enlarging further upon the matter, the Court is of the opinion that the relator is entitled to the writ prayed for.

THE owner of a lot abutting on a public street in a city has, as appurtenant to the lot, and independent of the ownership of the fee of the street, an easement in the street to the full width thereof, in front of the lot, for admission of light and air to his lot, which easement is subordinate only to the public right in the street.

Depriving him of or materially interfering with his enjoyment of the easement for any public use not proper to a street, is a taking of his property for public use within the meaning of the Constitution.

Appropriating a public street to use for an ordinary commercial railroad is not a proper street use.

Whenever without his consent, and without compensation to him, such a railroad is laid and operated along the portion of the street in front of his lot so as upon that part of the street to cause smoke, dust, cinders, etc., which darken and pollute the air, coming upon the lot from that part of the street, the lot-owner may recover whatever damages to his lots are thus caused by so laying and operating the railroad. Minnesota Supreme Court, Oct. 15, 1888. Adams *vs.* Chicago, B. & N. R. Co.

THEY have a good one just at present on a well known Bangor lawyer who is noted for his absent mindedness. He went up his own stairs the other day, and seeing a notice on the door, "Back at 2 o'clock," sat down to wait for himself.—*Bangor Commercial.* We can beat that. A lawyer of this city, having to go to New York at 2:40 p. m., went home at 1 o'clock to change his shirt, completely undressed himself, put on his night shirt and got into bed. Fortunately his wife soon found him and rehabilitated him.—*Albany Law Journal.*

A PERSON attending the hearing of an application for an injunction in a case in which he is interested as a party, in a county other than that of his residence, is privileged from the service of summons while going to, attending and returning from, the place of such hearing. Andrew *vs.* Lembeck, Sup. Ct. of Ohio.

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WHILE it must be conceded that claims against the Government may well be prosecuted under contracts for contingent fees, and that no evil consequences follow that practice, we think the rule does not apply to litigation in which a private person is the defendant. Such persons are often subjected to serious annoyance, and sometimes to actual loss by frivolous and malicious suits brought upon speculation by unscrupulous attorneys, who hope to force a compromise out of which they may at least get their fees. Sometimes such actions create clouds upon title to real estate, which can only be removed by a final judgment. Such suits, brought by irresponsible plaintiffs, through irresponsible attorneys, constitute a real grievance for which the ordinary process of the law affords no remedy. The strict enforcement of the ancient rule will operate to a certain extent to prevent these evils to limit necessary litigation, and to relieve the profession from the reproach of being always ready to undertake, upon speculation, any sort of case out of which there is a chance of making money.—*Central Law Journal.*

1. INDEFINITENESS in pleading should be taken advantage of by motion and not by demurrer; so that, where the language of a pleading will fairly admit of a construction that will sustain it against a demurrer, it should, in the absence of a motion to make definite and certain, be so construed.

2. An incorporated company cannot, unless authorized by statute, subscribe to the capital stock of another; a subscription so made is *ultra vires* and void.

3. The rule that a payment, voluntarily made under a mistake of law, but with a full knowledge of the facts, cannot be recovered back, rests upon general principles of public convenience, and applies to a corporation as well as to a natural person. The Valley Railway Co. *vs.* The Lake Erie Iron Co., Supreme Court of Ohio, Oct. 16, 1888.

THE COURTS.

SUPREME COURT OF THE UNITED STATES.

December 3.

Edward W. Rector, of Cincinnati, was admitted to practice.

73. Farnsworth, plaintiff in error, *vs.* The Territory of Montana. Leave to counsel to file briefs granted.

144. Ballard *vs.* Searls. Motion to reverse decree postponed until further hearing on the merits.

1109. The Town of Danville, appellant, *vs.* Brown et al. Motion to vacate supersedeas denied.

1103. The U. S. *vs.* Jones. Motion to advance submitted.

446. Robertson *vs.* Salamon et al. Motion to advance submitted.

846. The U. S. *vs.* The Am. Bell Tel. Co. Leave granted the clerk to issue the mandate in this cause.

1423. The late Corporation of the Church of Jesus Christ of Latter Day Saints et al. *vs.* The United States. Motion to advance submitted.

248. The North. Pac. R. R. Co. *vs.* Gates. Dismissed with costs.

1447. Roge, etc., *vs.* Borie et al. Docketed and dismissed with costs.

998. The U. S., ex rel. Miller, *vs.* John C. Black, Com. of Pensions. Motion to recall mandate argued.

491. Randolph *vs.* The Quidneck Co. et al. Argued.

1081. Kennedy *vs.* Hazleton. Submitted pursuant to twentieth rule.

99. Ware *vs.* Allen & Co. Argument concluded.

SUPREME COURT OF THE D. C.

GENERAL TERM.

December 3.

Edwards *vs.* Maupin. Petition of Alexander Kennedy dismissed. Opinion by Mr. Justice Merrick.

Keyser *vs.* Pickrell. Modification of former judgment refused. Opinion by Mr. Justice James.

McIntire *vs.* McIntire et al. Motion to dismiss appeal overruled; judgment below affirmed. Opinion by Mr. Chief Justice Bingham.

IN EQUITY.—New Suits.

November 26.

11468. Howard G. Douglass *vs.* James C. Wright et al. Injunction. Com. sol., E. H. Thomas.

November 27.

11469. Alfred S. Witherbee *vs.* Marie A. Witherbee. Com. sols., Totten and McKenney.

11470. Emil G. Schafer *vs.* Walter A. Johnston et al. To enforce mechanic's lien. Com. sol., John Ridout.

11471. Same *vs.* Charles M. Henley. To enforce mechanic's lien. Com. sol., Same.

11472. Same *vs.* William J. Morris. To enforce mechanic's lien. Com. sol., Same.

November 28.

11473. Scheutzen Park Co., ex parte, upon petition of J. T. Given et al. To dissolve charter. Com. sol., H. W. Garnett.

November 30.

11474. Edward S. Miller, alleged lunatic: upon petition of Commissioners of District of Columbia. To appoint committee. Com. sol., H. E. Davis.

CIRCUIT COURT.—New Suits at Law.

November 26.

29149. Theodore Bufford *vs.* The Pullman Palace Car Co. Accoount, $255. Plffs attys, Brown and Hill.

November 27.

29150. J. J. Nicholson & Sons *vs.* William E. Burford. Note, $200. Plffs atty, J. B Larner.

29151. George W. Knox *vs.* James Taylor. Account, $56.07. Plffs atty, R. R. Perry.

November 28.

29152. Augusta Newman *vs.* Enos Newman et al. Note, $1,200. Plffs attys, Holtzman and Moffett.

29153. E. G. Schafer & Co. *vs.* Harry Cavanaugh. Account $100.75. Plffs atty, John Ridout.

November 30.

29154. The Chesapeake and Potomac Telephone Co. *vs.* Lot Flannery. Account, $266.88. Plffs atty, C. S. Bundy.

29155. The Malaga Glass and Manufacturing Co. *vs.* George M. Dumler. Note, $143.94. Plffs attys, Newton and Lavender.

29156. Seth B. Whitely *vs.* William T. Riggs. Note, $5,000. Plffs atty, T. A. Lambert.

December 1.

29157. Alice M. Boswell, by next friend, *vs.* The District of Columbia. Damages, $5,000. Plffs atty, S. T. Thomas.

29158. Max Freund & Co. *vs.* Mary Weyl. Account, $259.13. Plffs attys, Morris & Hamilton.

29159. James Cannon *vs.* Frank B. Conger. Note, $6,103.91. Plffs attys, Garnett and Mackall.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of **Charles D. Pennebaker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1888.

ANNA E. PENNEBAKER, Ex'x, 1341 Corcoran st.

49 No. 3179. Ad. D. 14. R. S. Davis, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Flodoardo W. Howard**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of November, 1888.

EDW. W. DONN, Adm'r, 935 F st. n. w.

49 No. 3274. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **America Willey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of November, 1888.

GEO. R. WILLEY, Ex'r, 225 B st. n. w.

49 No. 3285. Ad. D. 14. Irving Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Anna M. Edds**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 30th day of November, 1888.

SETH SCHELL,
C. W. SCHELL,
Executors,
1341 29th st. n. w.

49 No. 3293. Ad. D. 14. Jesse H. Wilson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **John S. Slater**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of November, 1888.

ANNA M. SLATER, Adm'x, 911 6th st. n. w.

49 No. 3294. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Howard L. Hyatt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of November, 1888.

MARY E. HYATT, Ex'x, 233 G st. n. w.

48 No. 3297. Ad. D. 14.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 30th, 1888.

In the matter of the Estate of **Joseph W. Sands**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Henry L. Biscoe.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.

49 No. 3291. Ad. D. 14. S. T. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 30th, 1888.

In the matter of the Estate of **William H. Thompson**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Louis D. Wine.

All persons interested are hereby notified to appear in this Court on Friday, the 28th day of December next at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.

49 Dan'l O'C. Callaghan, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel W. Gottwals**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 22d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of November, 1888.

EMILY K. GOTTWALS.
DAVID B. GOTTWALS.
439 Warner st. n. w.

48 No. 3268. Ad. D. 14. L. Cabell Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Milford F. Lackey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of November 1888.

MARGARETTA LACKEY, Ex'x, 127 Md. ave. n. e.

48 No. 3296. Ad. D. 14. Wm. W. Boarman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of December, 1888.

William B. Webb et al. vs. Mathilda W. Stanton et al. } No. 11455. Docket 28.

On motion of the plaintiffs, by Mr. H. Randall Webb, their solicitor, it is ordered that the defendants, **Edwin M. Stanton** and **Sophy C. Stanton**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a new trustee to release lot D, subdivision in square 226, from the effects of a deed of trust, made to Edwin L. Stanton, now deceased.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
49 By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **John Dade**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of November, 1888.

JOHN F. DADE, Adm'r, 411 1st st s. e.

47 H. Randall Webb, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Anna M. Furmage *vs.* **Mary Furmage et al.** } No. 10975. Eq. Doc. 27.

Irwin B. Linton, the trustee herein, having reported to the Court that he has sold to Lewis C. Rauterberg sub-lots 36 and 37, in square 479, in the City of Washington, containing 4,565 square feet at 81 cents per square foot, and sub-lot 38, in said square, to Frank E. Waring, for $2,455, the said sales aggregating $6,289.60, but being conditioned upon the furnishing of title-insurance policies to the purchasers out of the proceeds of sale, it is, this 19th day of November, A. D. 1888, ordered that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 19th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
47 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Thomas H. Dorsey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of October, 1888.

ALLENE S. DORSEY, Adm'x, 481 Pa. ave. n. w.
47 No. 3261. Ad. D. 14. Richard P. Evans, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary E. Thomas and others *vs.* **W. W. Thomas and others.** } Equity No. 10,896. Doc. 27.

Ordered, this 20th day of November, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee, of the real estate described in the said report, filed November 19th instant, be, and the same is, ratified and confirmed, unless cause to the contrary be shown on or before the 20th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,010.00.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,
47 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of November, 1888.

Hattie V. Turner *vs.* **George Turner.** } No. 11369. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. Guilford White, her solicitor, it is ordered that the defendant, **George Turner**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the grounds of habitual drunkenness, desertion and non-support.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS Clerk, &c.
48 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of November, 1888.

Barlow L. Walker et al. *vs.* **Thomas D. Walker et al.** } No. 11258. Docket 28.

On motion of the plaintiff, by Mr. W. P. Bell, their solicitor, it is ordered that the defendant, **Thomas D. Walker**, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for the sale of lot numbered seven (7), in square numbered eight hundred and thirty-four (834), whereof the plaintiffs are owners of one moiety; preliminary to which the writ *de lunatico inquirendo* to issue as to defendant Mary C. Walker.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 9th day of November, A. D. 1888.

Frances C. Jones *vs.* **John Jones et al.** } 11364. Eq. Doc. 28.

Hosea B. Moulton, the trustee herein, having reported a sale of the east half of sub-lot numbered forty-one (41), in square numbered three hundred and sixty-seven (367), in the City of Washington and District of Columbia, to James H. Marr, agent for John T. Arms, for one thousand and fifty dollars ($1,050), it is, this 9th day of November, A. D. 1888, ordered that said sale be confirmed, unless cause to the contrary be shown on or before the 9th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER for three successive weeks before said day.

By the Court. W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk,
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Sitting in Equity, November 10, 1888.

Frank Hume *vs.* **Della B. Keefe et al.** } 11056. Eq. Doc. 28.

Upon consideration of the report of Ferdinand Schmidt and Neal T. Murray, trustees, it is, this 10th day of November, A. D. 1888, ordered that the sale of the real estate known as all of lot B and the east ten inches of lot A, in Wallach's subdivision of part of square 551, in Washington, D. C., to Della B. Keefe, for the sum of $2,845, be ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, 1888.

Provided a copy of this order be published once a week for three successive weeks before said day in the WASHINGTON LAW REPORTER.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.
46 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 21st, 1888.

In the matter of the Estate of **John H. Barker**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased having been made by Julia A. Barker.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
48 W. W. Boarman, Proctor.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of Montgomery County, Maryland, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters, Testamentary on the personal estate of **Ellen Haake**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1888.

JOHN T. VINSON, Ex'r.

47 No. 3103. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Frederick F. Whitehead**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of November, 1888.

JOSEPHINE S. WHITEHEAD, Adm'x,
2016 R st. n. w.

47 No. 3272. Ad. D. 14. A. B. Duvall, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of **Maria F. Conlan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of October, 1888.

RUDOLPH EICHHORN, Ex'r, 639 La. ave.

47 No. 3154. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of November, 1888.

Nellie M. Simmons et al. vs. Jennie Ramsey et al. } No. 11396. Eq. Docket 28.

On motion of the complainants, by Mr. John Ridout, their solicitor, it is ordered that the defendants, Jennie Ramsey and James P. Ramsey, her husband, Delozier Rittenhouse and Dolores Rittenhouse, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before said day.

The object of this suit is to procure partition by sale of certain real estate in the City of Washington, District of Columbia, of which James Davidson died seized.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

47 By M. A. CLANCY, Ass't Clerk.

E COURT OF THE DISTRICT OF COLUMBIA.

16th day of November, 1888.

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S. COX, Justice.
rue cop MEIGS, Clerk, &c.

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15	" General,	5	50	3.50
16	Stock Transfer,	2	10	75
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BLAIR, JOHN S., 1420 F St. n. w.

DUMONT, N., 629 F St. n. w.

EDWARDS & BARNARD, 500 5th St. n. w.

MACKEY, FRANKLIN H., 505 D St. n. w.

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JOHN H. VOORHEES,

ATTORNEY AT LAW,

Solicitor of Patents and Counsel in Patent Cases.

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The Washington Law Reporter.
ESTABLISHED 1874.
EDWARD S. McCALMONT, *Editor.*
VOL. XVI. - - - - - - - No. 50
WASHINGTON, D. C., - - DECEMBER 12, 1888

In the *Columbia Law Times* for November is an interesting article on "The Legal Relations of Deaf-Mutes to the Hearing Community," by Isaac Lewis Peet, principal of the New York Institution for the Instruction of the Deaf and Dumb. He gives an account of a case in New Mexico in 1883: "Three white men were indicted, tried, convicted and sentenced to be executed for the murder of three Chinamen, perpetrated, according to the testimony of competent witnesses, at about 8 o'clock on the evening of February 3, 1883. The only evidence adduced whereby the defendants could be identified as the perpetrators of the deed was that given by Luther Carey, a deaf mute boy between nine and ten years of age. He had never been sent to school, but between him and his mother had grown up a method of communicating by signs sufficiently distinct for ordinary purposes. According to the mother's testimony, on the same evening that the killing took place the child came into the bar room of the public house kept by his parents in a state of great excitement. He drew his finger across his throat, took a stick and pounded with it and raised it as if in the act of shooting, and went through the action of falling. The mother appealed to a soldier who happened to be present, and asked him what the child meant. The soldier thinking he referred to a difficulty which had lately occurred between two soldiers at the fort in the vicinity, pointed to himself, but the little boy pushed him aside and pointed to Duran, one of the defendants, and putting his hand to the back of his head represented the braiding of three queues. The next morning the deed of violence was discovered, and, according to other testimony, on the third day the little boy was put upon a horse and allowed to guide the party of investigation. Keeping considerably in advance he struck the trail of the horses which the murderers had ridden, and followed it on a circuitous and out-of-the-way route off from any road, through a bushy and unfrequented part of the country to the very house where the Chinamen had been killed, and by signs and actions expressed astonishment at not finding the bodies. He again went through the motions of killing the three queue wearers, and described the murderers by drawing his finger around his throat, by twisting his nose, and by dotting his face with his fingers. Of the defendants in court, one had a clearly defined mark around his throat, another had a broken down nose, and the other was decidedly pock-marked. Before the Court "he drew a plot of the house and grounds and objects in the immediate vicinity, the roads to and from the place, and its location in reference to Fort Bayard. On this plot he also marked out the position of each of the defendants while in the act of killing the Chinamen, as also his own position holding the horses. He also designated on the plot the position of the three Chinamen where they fell. With the aid of this plot he was able by signs and gestures to express very intelligently the manner in which the Chinamen were killed, and the part each defendant took in perpetrating the deed."

The way in which he happened to be an eye witness, and, indeed, the only eye witness to the deed, was that he was a great pet with the frequenters of his parent's tavern, and, among others, of the lawless men who were identified by him. He was accustomed to ride with them on their expeditions, and was greatly amused and interested by their ordinary exploits. But accompanying them on this occasion his innocent soul revolted in horror at the cruel deed which they had not hesitated to let him see, because they were certain that no accusation could be made against them by a dumb witness. The judge who admitted his testimony, notwithstanding the earnest remonstrance of the defense, used the following language: "This little boy has no education, yet I am inclined to believe that notwithstanding the fact that the mother is unable to communicate to him any questions tending to test his knowledge of an accountability to a Supreme Being, yet as a psychological fact, growing out of his mental condition, he would be incapable of communicating any events except such as he had seen. He would be incapable of manufacturing or inventing a falsehood as to the material facts, because he could have no idea of the facts unless he saw them. In my opinion, this would be a better test of the truth, or at least as good a test of the truth, as would be the belief of a man of mature age and clear understanding in his accountability to the Supreme Being. This, of course, breaks into the general rule of law as regards the competency of witnesses. Yet, all the facts in the case considered, I believe my view of the case to be the law, and that this case presents a well grounded exception to the general rule. My opinion is that the witness is competent; the very fact that ordinary ideas about things and events which he has not seen cannot be communicated to him is a better test of the credibility of what he is able to communicate by signs than would be his mere belief in his accountability to the Supreme Being. The other classes of ideas which he entertains would spring from the sensations of touch, taste and smell. In this view of the case, I believe it is impossible for the boy to entertain ideas in regard to passing events unless he had actually witnessed them." The case having been appealed, was reversed by the Supreme Court of the Territory at its January Term in 1884 by Bell, J., Axtell, C. J., concurring in the following language: "A deaf and dumb child who has never been educated in an institute for deaf mutes, who cannot be made to understand anything of the nature of an oath, and who can do nothing more than give an account of what he saw, without affording any means of examination or cross-examination, is not a competent witness, especially in a capital case." From this decision Judge Bristol dissented, and concluded an elaborate review of the evidence as follows: "The books nowhere furnish a precedent like this. If the law of evidence in no

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way opens the door for testimony of this kind, then all I have to say is that the law in this respect is certainly at fault, and the sooner it is changed, either by judicial precedent or by legislation, the better. The sole object of every judicial investigation, upon evidence, is to ascertain the truth as to the issue involved. Being satisfied as to the absolute truthfulness of this deaf and dumb boy's communications as to the details of the murder, and who committed it, it is my opinion that if he cannot be considered competent as an ordinary witness because he cannot be communicated with and made to understand the legal and technical obligations of an oath, then under the very extraordinary circumstances attending the case his communications ought to have been considered as having been properly received as circumstantial evidence, proved by his mother, who understands them, in precisely the same manner as tracks or a trail leading to an identification of the murderers might have been proved and received as competent evidence; and that it would have been proper for this Court to have established a precedent of that kind." It certainly is a defective state of the law, also, when a murderer may go unpunished because nobody but an atheist witnessed the deed.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, *Appellant*,
vs.
JOHN F. KNOX.

Appeal from the Court of Claims.

Decided November 19, 1888.

A Commissioner of a Circuit Court of the United States is entitled to fees for keeping a docket and making entries therein in regard to parties brought before him charged with violations of the laws of the United States, notwithstanding refusal of Circuit Court to approve his account; and an action may be brought for the same in the Court of Claims without a previous presentation of the claim to the accounting officers of the Treasury.

ROBERT A. HOWARD, Ass't Atty. Gen'l, and F. P. DEWEES, for appellant.

GEORGE A. KING, ESQ., for appellee.

MR. JUSTICE MILLER delivered the opinion of the Court:

This is an appeal from the Court of Claims brought by the United States to reverse a judgment obtained by John F. Fox, the appellee, for the sum of $196 for services as a Commissioner of the Circuit Court of the United States for the Northern District of Texas.

These services were the keeping of a docket and making entries therein in regard to parties brought before him charged with violations of the laws of the United States. Two objections were made in the Court below, and are reproduced here, to the claimant's right to recover in the Court of Claims. The first of these is, that no approval or disapproval of the claim was made by the Circuit or District Court. This proposition is founded on the first section of the Act of February 22, 1875 (18 U. S. Stats. at Large, 333), which reads as follows:

"That before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the money of the United States, shall be allowed by any officer of the Treasury, in favor of clerks, marshals or district attorneys, the party claiming such account shall render the same, with the vouchers and items thereof, to a United States Circuit or District Court, and, in presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, prove in open Court, to the satisfaction of the Court, by his own oath or that of other persons having knowledge of the facts, to be attached to such account, that the services therein charged have been actually and necessarily performed as therein stated; and that the disbursements charged have been fully paid in lawful money; and the Court shall thereupon cause to be entered of record an order approving or disapproving the account, as may be according to law and just. United States commissioners shall forward their accounts, duly verified by oath, to the district attorneys of their respective districts, by whom they shall be submitted for approval in open Court, and the Court shall pass upon the same in the manner aforesaid. Accounts and vouchers of clerks, marshals and district attorneys shall be made in duplicate, to be marked respectively 'original' and 'duplicate.' And it shall be the duty of the clerk to forward the original accounts and vouchers of the officers above specified, when approved, to the proper accounting officers of the Treasury, and to retain in his office the duplicates, where they shall be open to public inspection at all times. Nothing contained in this act shall be deemed in anywise to diminish or affect the right of revision of the accounts to which this act applies by the accounting officers of the Treasury, as exercised under the laws now in force."

It will be observed that this section makes a somewhat different provision as to the course to be pursued by clerks, marshals and district attorneys who have accounts against the Government, and that which is to be taken by United States commissioners. The former shall render their accounts, with the vouchers and items thereof, to a United States Circuit or District Court, and in open Court prove them in the presence of the district attorney or his sworn assistant, whose presence shall be noted on the record, "and the Court shall thereupon cause to be entered of record an order approving or disapproving the account, as may be according to law and just." As to commissioners, it is provided that they "shall forward their accounts, duly verified by oath, to the district attorneys of their respective districts, by whom they shall be submitted for approval in open Court, and the Court shall pass upon the same in the manner aforesaid."

The same section also requires "that before any bill of costs shall be taxed by any judge or other officer, or any account payable out of the money of the United States shall be allowed by any officer of the Treasury" in favor of these parties, the proceedings just stated shall be had. It is also provided that "nothing contained in this act shall be deemed in anywise to diminish or affect the right of revision of the accounts to which this act applies by the accounting officers

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of the Treasury, as exercised under the laws now in force."

The findings of fact, made by the Court in this case, show that Knox did keep the docket, and render the services charged in his petition, to the amount of $390, but the Court of Claims disallowed all but $196 of it, as being barred by the Statute of Limitations. That Court also finds that the claimant made out and verified by oath his account of fees for keeping said docket, and that he sent it to the United States district attorney to be presented to the Court. It further appears by correspondence between the claimant and the clerk of the Court and the district attorney that the latter offered to present the account to the judge at Dallas, but that the judge refused to receive or approve it, suggesting that the district attorney had better call for the books and examine them himself, and see if the account was correct.

Soon after the claimant took his books to Waco, and left them with the district attorney for examination. That officer thereafter returned the books to him, and informed him that the judge would not act upon the account. There is a term of the District Court held at Dallas and another at Waco for the Northern District of Texas, and we take this statement of what occurred to amount to a presentation by the claimant of his account through the district attorney to the Court, and an absolute refusal by the Court to act upon the claim.

Section 846 of the Revised Statutes declares as follows: "The accounts of the district attorneys, clerks, marshals and commissioners of Circuit Courts shall be examined and certified by the district judge of the district for which they are appointed, before they are presented to the accounting officers of the Treasury Department for settlement. They shall then be subject to revision upon their merits by said accounting officers, as in case of other public accounts."

It was decided in United States *vs.* Wallace, 116 U. S., 398, that a United States commissioner who kept a docket, by direction of the court appointing him, and entered therein the proceedings in criminal cases heard and decided by him, is entitled to the same fees allowed to clerks of courts by Section 828 of the Revised Statutes for the keeping of their dockets.

It is evident from the language of Section 846, and that of the act of 1875, above cited, that the Treasury Department has a right to require some action by the district attorney and the Court before it will allow or consider a claim in such a case as this.

The second objection made by counsel for the United States is that the claim should have been presented at the Treasury Department and have been disallowed by the accounting officers. This question was considered in Clyde *vs.* United States, 13 Wall., 38, and we understand the Court to have decided in substance that the action of the Auditing Department, either in allowing or rejecting such a claim, was not an essential prerequisite to the jurisdiction of the Court of Claims to hear it. In that case it appeared that the Court of Claims had refused to consider a claim against the United States presented to it because the claimant had not complied with a rule of that Court which required that the party should have first gone to the department which might have entertained it before he was permitted to proceed in that tribunal. But this Court held that such a rule was "an additional restriction to the exercise of jurisdiction by that Court. It required the claimant to do what the acts giving the Court jurisdiction did not require him to do, before it would assume jurisdiction of his case." The rule was, therefore, declared to be void, and the Court of Claims was directed to proceed with the consideration of the case.

The presentation, therefore, of the present case to the officers of the Government charged with the auditing of such accounts in the Treasury Department was not necessary to give the Court of Claims jurisdiction, and it would have been a useless step, because the statute expressly says that the Court shall first "cause to be entered of record an order approving or disapproving the account, as may be according to law and just."

No provision is made for a refusal by the Court to act upon a claim, and the most forcible argument now made on behalf of the Government against the right of the Court of Claims to take jurisdiction of this case, is that no such order was made by the Circuit or District Court, and that the proper remedy for the claimant is a proceeding in *mandamus* to compel the Circuit Court to act upon the account.

We do not know what may have been the circumstances which induced that Court to decline to act upon this claim, but we are not prepared to say that such a writ is the proper remedy for the claimant to resort to here. If there were no other this might be so, but the attempt to proceed by *mandamus* would raise the question, always a troublesome one, whether it is a part of the judicial function to take part in auditing the accounts against the Government, or preparing them for submission to the auditing officers. But as we feel well assured that the claimant, who has done everything in his power to secure action upon his account by the district attorney and the Court, and who has a just claim against the Government for services rendered under the act of Congress, has a remedy in the Court of Claims, we do not see why he should be compelled first to resort to a writ of *mandamus* against the Circuit Court. This remedy, always an unusual one and out of the ordinary course of proceeding, would be attended, in the case before us, with delay and embarrassment. It is not by any means so efficient nor so speedy as an action in the Court of Claims. If he should succeed, after trouble, delay and expense, in procuring action by the local court, which might be either an approval or a disapproval of his claim, he would still have to go to the auditing department, in which the action of the Court is only advisory, or he might sue in the Court of Claims as shown in the case of Clyde *vs.* United States, 13 Wallace, *supra*.

We are, therefore, of opinion that the Court of Claims had jurisdiction of the case, and its judgment is affirmed.

A CLAIM allowed by an administrator and afterwards approved by the probate judge, bears interest from the date of the approval. *In re* Glen's Estate, S. C. Cal., Jan. 25, 1888.

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Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

AMAZIAH D. BARBER
vs.
JOHN H. HARRIS.

No. 28,321. AT LAW.

The CHIEF JUSTICE and JUSTICES JAMES and MERRICK sitting.

Decided November 5, 1888.

1. In a landlord and tenant proceeding it is sufficient if the complaint is sworn to before any person competent to administer an oath, whether he be in the District or elsewhere.
2. On a hearing upon *certiorari* to a justice of the peace on a landlord and tenant proceeding the question of the jurisdiction of the Court below to entertain the complaint (the relation of landlord and tenant being denied), is to be tested by the case as made upon the record, and if the averments of the complaint show a state of facts which will create the relation of landlord and tenant, it is sufficient to sustain the jurisdiction; whether or not the proofs sustain the averments, cannot be inquired into upon *certiorari;* if the justice erred in his judgment upon the evidence, that is a matter for appeal.
3. *Certiorari* cannot be resorted to to fulfil the functions of an appeal.

APPEAL from an order quashing a writ of *certiorari* in a landlord and tenant proceeding.

THE FACTS are stated in the opinion.

Messrs. EDWARDS and BARNARD for complainant (appellee):

1. *Certiorari*, at the common law, will only lie to inferior jurisdictions in cases where they proceed illegally, and where no appeal or other mode of directly reviewing their proceedings is provided by law. Farrell *vs.* Taylor, 12 Mich., 113; Ennis *vs.* Ennis, 110 Ill., 75, 82; Miller *vs.* Trustees, 88 Ill., 26; Witkowski *vs.* Skalowski, 46 Ga,, 41; Sturgis *vs.* Shepard, 28 Cal., 115.

The object of the writ is to provide a remedy whereby the justice of the peace, or other tribunal of limited powers, may be confined within statutory jurisdictional limits; and every presumption will obtain in favor of sustaining the jurisdiction which is exercised by such tribunal. Baizer *vs.* Lasch, 28 Wis., 268; 2 Wait's Act. and Def., 139; Williamson *vs.* Carnan, 1 G. and J., 196; C. and R. I. R. Co. *vs.* Fell, 22 Ill., 333; Charter Oak L. Ins. Co. *vs.* Talmadge, 3 Mac A. 422.

Where an appeal is provided by law, questions of jurisdiction can be raised on the appeal; and where the questions are of such character as to be so raised and reviewed, although going to the jurisdiction, a writ of *certiorari* will not lie. Farrell *vs.* Taylor, 12 Mich., 113.

In the present case no question can arise as to the jurisdiction, as that is expressly conferred by the statute.

Whether the judgment of the justice of the peace is erroneous or not, cannot be questioned on an application for writ of *certiorari*. His jurisdiction of the parties and the subject-matter being shown, the correctness of his judgment can only be inquired into on appeal. 2 Wait's Act. and Def., 139; Owens *vs.* State, 27 Wis., 456; People *vs.* Van Alstyne, 32 Barb., 131; People *vs.* Betts, 55 N. Y., 600; People *vs.* Co. Judge, 40 Cal., 479.

2. Negligence and laches of the petitioner in defending his suit, or in taking an appeal, or in applying for the writ, will debar him from this remedy where otherwise it might have been granted him. Dye *vs.* Noel, 85 Ill., 290; Trustees *vs.* Directors, 88 Ill., 100; 2 Wait's Act. and Def., 138; Erwin *vs.* Erwin, 3 Dev. (N. C.), Law, 528; *In Re* Lantis, 9 Mich., 324.

3. If we were to go into the merits of the case, it would appear that the petitioner had no valid defence which he could have made, either before the justice or on an appeal. The plaintiff was the *bona fide* purchaser of the land in question under a valid and subsisting deed of trust placed on the said property before defendant leased it; and defendant held in subordination to said trust.

After a sale under such a deed of trust or mortgage, if the grantor or his assignee remains in possession, without agreement, he becomes the tenant by suffrance of the purchaser. Luchs *vs.* Jones, 1 Mac A., 345; Taylor's Land. & Ten., 14, 46, 47, notes; Kinsley *vs.* Ames, 2 Met., 29; Howard *vs.* Merriam, 5 Cush., 576.

The same rule applies to the tenant or lessee as to the grantor himself. Keech *vs.* Hall., 1 Doug. (K. B.), 21; Wood's Land. & Ten., 185, 190, 191.

In this case, the merits of the controversy were not only heard and determined by the justice of the peace, but they were fully heard by this Court in No. 10,046 Equity, and determined adversely to the petitioner. 15 Wash. Law Rep., 881.

MR. A. C. BRADLEY, for defendant (appellant):

The doctrine that a writ of *certiorari* ought not to be granted in any case in which the party aggrieved is entitled to a remedy by an appeal to a superior jurisdiction, applies only to those cases in which the writ is sought to be used for the correction of *errors* and *irregularities*, and not to those in which the basis of the application is that the inferior tribunal has exceeded its jurisdiction. The same remark may be properly applied to the doctrine of laches in connection with the same subject. If the judgment complained of is void for want of jurisdiction in the tribunal rendering it, no failure or neglect to appeal, and no lapse of time will be of any effect to validate it. As a judgment it is always void whenever asserted. People *vs.* Judges, 24 Wend., 253.

Does the record returned by the justice *show* that he had jurisdiction of the cause? He is not a court of record. The jurisdiction in landlord and tenant proceedings is a special statutory jurisdiction, outside of his general powers, to be exercised only in certain specified cases, and in the specific way directed by statute. There is no presumption in favor of his jurisdiction, and the proceedings must show on their face that the cause of which he assumed jurisdiction is within the statute, and that every step necessary to confer jurisdiction has been duly and regularly taken. Freeman Judgments, secs. 517, 527; Evertson *vs.* Sutton, 5 Wend., 285.

The law under which Justice Helmick assumed jurisdiction is contained in sections 680

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to 684, inclusive, Rev. Stat. U. S. relating to D. C., under chap. 19, "Landlord and Tenant."

This statute was intended to apply only to cases in which the relation of landlord and tenant existed by convention of the parties, express or implied.

It was in reference to such cases only that Congress pretended to legislate, as is clearly shown by the title. It is not claimed that a plain enactment can be overruled or controlled by the title to the act, but that "when the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived, and in such case the title claims a degree of notice, and will have its due share of consideration." U. S. *vs.* Fisher, 2 Cr., 387; U. S. *vs.* Palmer, 2 Wheat., 631.

There is no language used in the act which necessarily applies to other cases than those enumerated, or to any case in which the conventional relation does not exist, and "where the general system of laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects." U. S. *vs.* Fisher, 2 Cr., 390.

The act constitutes three classes of tenancies by sufferance: 1st, a tenancy without *express* agreement, which before the statute was by implication of law a tenancy at will; 2d, a tenancy without *express* contract, which but for the statute would be, by implied agreement, a tenancy from year to year; and 3d, a tenancy or holding by express contract or lease the term of which has expired. Before the act only the third class of those named was a tenancy of that character. After defining and classifying tenancies at will and by sufferance, the act provides in the same sentence that they may be terminated by a thirty days' notice to quit. It is clear that no other tenancy by sufferance is contemplated in the first section. It is claimed, however, that the 2d section of the act covers any case where one holds possession without right after his estate is determined in any manner, by notice to quit, or otherwise. It is clear, however, that except in a case of a forcible entry or forcible detainer, the remedy given is intended to apply to a tenancy determined by the terms of the lease, or by notice to quit, or in any other way adopted by the parties. It was never intended to make the remedy a substitute for the action of ejectment, or that it should apply to the case of the possession by a grantor under a deed of trust where there has been default and sale made. Similar statutes have received the construction contended for in the following cases: Evertson *vs.* Sutton, 5 Wend., 281; Roach *vs.* Cosine, 9 *Id.*, 227; People *vs.* Simpson, 28 N. Y., 55; Hastings *vs.* Pratt, 8 Cush., 121; Boyle *vs.* Boyle, 121 Mass., 85; Reed *vs.* Elwell, 46 Me., 278; Leavitt *vs.* Wallace, 12 N. H., 489.

If the facts set forth in the petition are true (and the motion to quash concedes their truth), the petitioner was not tenant by the sufferance of Barber, the relation of landlord and tenant never existed between them, the justice had no jurisdiction of the case, and his judgment is void.

The decision by this Court in the case of Luchs *vs.* Jones was that the Court had no jurisdiction of the appeal, and it was dismissed. Its advisory opinion delivered in that case is not a precedent, was not well considered, and ought not to be followed. Luchs *vs.* Jones, 1 Mac A., 345.

If the averments of the petition are disregarded, and the validity of the proceedings and the jurisdiction of the justice are tested solely by the face of the record, the judgment and proceedings must be set aside as *coram non judice*. By the return of the justice it appears that a complaint addressed to the justice was made in writing and sworn to before a notary public of Oneida County, State of New York.

There is no authority in the statute for a complaint under oath so made, and it conferred no jurisdiction upon the justice to issue the writ. The language of the act is "on written complaint on oath of the person entitled to the premises to a justice." It contemplates the personal presence of the complainant before the justice, and the administering of an oath by the justice. He must judge of the propriety and necessity of issuing the writ by having the facts sworn to before him by the party complaining. He is not authorized to take the certificate of any one that the complaint is signed and sworn to by the complainant. The statute does not admit of action by the justice upon an affidavit of the facts being presented to him. Had Congress so intended, appropriate language would have been used. The language used is almost identical with that used in Rev. Stat. D. C., in Section 999, giving power to a justice to issue warrants returnable to the Police Court; in Section 1050, giving the judge of the Police Court power to issue process for arrest, and in Section 1064 providing for prosecution by information. In these instances, under Section 999, the complaint under oath must be made before the justice, and under the other two sections the oath must be made at the Police Court. No one would impute power to either a justice of the peace or a judge of the Police Court to issue criminal process upon an affidavit made in some other jurisdiction and transmitted to him, and yet either officer would have as much authority and power to issue such process under those circumstances as had the justice of the peace to issue the warrant in this matter.

The law requires the justice to issue a summons to a proper officer "commanding the *person complained of* to appear and show cause." The summons shown by the return of the justice is a command addressed to the constable requiring him to summon the defendant. The service of this writ did not confer jurisdiction upon the justice, and as no writ was ever issued as required by law, the proceeding was void, notwithstanding the defendant's appearance. Cunningham *vs.* Goelet, 4 Denio, 71; Hill *vs.* Stocking, 6 Hill, 314; Bigelow *vs.* Sterns, 19 Johns., 39.

The complaint is deficient, and fails to show that the cause was within the jurisdiction of the justice in several essential particulars. Instead of stating the facts which show that complainant is entitled to the remedy sought, the complainant states and swears to conclusions of law.

1. The statute provides that the justice may issue summons upon written complaint under oath of the person *entitled to the premises*. The complaint states that Barber is entitled to the

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possession. This is swearing to a conclusion of law, but if a conclusion of law was sufficient, not to the conclusion required. It fails to state whether the complainant is owner in fee or otherwise in what way he is entitled to the possession.

2. The statute provides that the complaint shall charge the forcible entry or detainer "as aforesaid;" that is, that it shall show the estate and tenancy of the defendant, how created, how determined, and in what way the possession is held without right. The complainant swears to a conclusion of law. He says that the defendant is "tenant by the sufferance of the complainant." The statute makes three classes of tenancies by sufferance, and there are various opinions and judicial decisions as to other tenancies or *quasi* tenancies by sufferance not mentioned in the statute, and the complaint fails to indicate to which of them the defendant belonged. It was essential that he should state the facts constituting the relation, not his ultimate legal conclusion from the facts, in order that the jurisdiction of the justice should be indicated. The failure to do so is fatal to the proceeding. Ricketson *vs.* Richardson, 26 Cal., 153; Forbes *vs.* Hyde, 31 Cal., 353; Roberts *vs.* Matthews, 38 N. Y., 451; Hill *vs.* Stocking, 6 Hill, 314; Sims *vs.* Humphrey, 4 Denio, 185; Fowler *vs.* Roe, 25 N. J. L., 549; Shepherd *vs.* Sliker, 31 *Id.*, 432; McGinniss *vs.* Vernon, 67 Pa., 144; McDermott *vs.* McIlwain, 75 *Id.*, 341; Evans *vs.* Muller, 25 Mo., 195.

Mr. JUSTICE MERRICK delivered the opinion of the Court:

In this case there was a petition for a writ of *certiorari* to a justice of the peace to require him to send up the proceedings in a landlord and tenant case. The original application to the justice was made and the warrant was issued on the 31st of July, 1886. Judgment for possession was rendered August 14, 1886, and a writ of restitution was issued on the 27th of November, 1886, and the petition for the writ of *certiorari* was filed on the 19th day of December, 1887. The petition set forth, as its ground of complaint, that the written complaint under oath, was not made to or before the said justice of the peace, as is required by law, and that the applicant for the writ did not appear before the said justice to make such application, but made an affidavit before a notary public in the State of New York, and that upon said affidavit the justice assumed to act and caused the summons to issue, and proceeded with the case to judgment.

The second ground of objection is that the relation of landlord and tenant did not exist between the applicant for the writ and the petitioner.

The Court does not think that a hypercritical construction should be given to the statute. We think that it is abundantly sufficient if the complaint under oath be presented to the justice and acted upon, but that the oath itself need not be made before the justice who issued the writ. There is nothing in the policy of the law, there is no good so far as the Court can see, to be accomplished by such a strict construction of the rule as to require that an affidavit, which is the foundation of the proceeding, shall be made in proper person before the identical justice who issues the summons. All the purposes of the law are gratified by having the complaint avouched by a sworn statement of the grievance of which the party complains, and this is as good and efficacious and as completely competent to accomplish the object of repressing vexatious litigation, if the oath is made before and duly certified by any officer competent to administer an oath, as if made before the identical justice. That ground of objection, therefore, the Court thinks, is entirely untenable. The oath may be as well made before a party competent to make the oath in one place as in another, and the justice could as well conduct the proceedings thereupon in due order as if the oath had been made before himself.

It is objected, in the second place, that the relations of landlord and tenant did not exist between the two parties.

The petition before the justice sets forth the relation of landlord and tenant, and that the justice assumed jurisdiction and acted upon the case as made. Now, what may have occurred in proof we do not and cannot know upon the application for a *certiorari*.

We are to judge as to the question of jurisdiction by the case as made upon the record itself. In other words, in all cases where there is an objection made on the ground of jurisdiction, we must, as the Supreme Court has said, test it by inquiring whether a demurrer would lie to the proceedings as stated in the papers upon the record. In this case the averments on the record—that is to say, the complaint, which is the only record in the case—are that the complainant represents that he is entitled to the possession of certain tenements, describing them, and that "they are detained and withheld from him without right by the defendant, tenant thereof by sufferance of this complainant, and whose tenancy and estate therein has been determined by the service of a due notice to quit, of thirty days, in writing."

We are of opinion that these averments constitute fully a statement of the relation of landlord and tenant between the parties. Now, whether the proof came up to these averments or not, cannot be inquired into upon a writ of *certiorari*. *Certiorari* goes only to the jurisdiction. It does not go to any errors of judgment that may have been committed by the justice in the progress of the exercise of that jurisdiction. In other words, it does not fulfill the function of an appeal for erroneous judgment upon facts as applied to the jurisdictional question, and we cannot inquire, upon a writ of *certiorari* issued twelve months after the writ of restitution had been issued, whether or not there was sufficient evidence before the justice to authorize him to pass judgment in a case where all the jurisdictional facts were fully gratified upon the record.

For these reasons *the decision of the Circuit quashing the writ of certiorari is affirmed.*

AN action to enforce a mechanic's lien is a proceeding *in rem*. A judgment obtained in such an action cannot be collaterally attacked on account of the coverture of the defendant, although that coverture appears in the deed under which the defendant holds title. Shryock *vs.* Buckman, Supreme Court of Pennsylvania.

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JAMES JACKSON, JR.,
vs.
EMMA M. COMBS, AND COLUMBUS ALEXANDER.

Equity. No. 8348.

THE CHIEF JUSTICE and JUSTICES JAMES and MERRICK sitting.

Decided October 15, 1888.

Under an agreement to pay a sum of money out of the proceeds of a claim of the promisor against the United States as soon as the same shall be collected, there is no legal obligation on the part of the promisor to make known to the promisee the fact of the collection of the fund, and his failure to do so will not prevent the running of the Statute of Limitations from the date of its collection.

In such a case the rule is that unless by virtue of the contract itself, or by some relation of the parties, the defendant is under a duty to make known the fact of payment, mere silence amounting to nothing more than non-action is not such a fraud upon the plaintiff as entitles him to complain of it; but it *seems* it would be otherwise if he were guilty of any act the tendency of which would be to deceive the plaintiff,

APPEAL from a decree of the special term dismissing a bill filed to procure the sale of a decedent's realty in satisfaction of an alleged indebtedness, the personalty being insufficient to pay the same.

F. E. ALEXANDER, for plaintiff.

MESSRS. NATH'L. WILSON and ROBERT CHRISTY, for defendants.

MR. CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

From the bill of complaint it appears that one Joseph Combs, having a claim amounting to $2,000 against the United States growing out of the seizure by the government in 1863, of a steamer of which he was the owner, employed one William Fitch, a claim agent, at Washington, to collect the claim. The contract of employment was prepared in writing by J. M. Yznaga, the step-son and attorney of Combs.

This contract, which was limited in time, expired by its own limitation Thereupon another contract unlimited as to time was entered into between Combs and Fitch on the 31st of January, 1868.

This agreement was also prepared and put in writing by Combs' attorney and step-son, J. M. Yznaga.

The plaintiff avers that Fitch spent considerable time and money in the preparation of papers and prosecution of the claim against the government, but that in June, 1868, he, Fitch, at the earnest solicitation of Combs and his friends, consented to relinquish this contract, in consideration that Combs, with one S. G. Cabell, should agree to pay him $1,000 out of the proceeds of this claim when collected. Accordingly the contract between Combs and Fitch was rescinded, and Combs with Cabell executed to Fitch an agreement as follows;

"$1,000.

WASHINGTON, D. C., *June* 18, 1868.

For value received in services rendered and a further consideration of giving up the contract between Joseph Combs and William Fitch for collecting a claim against the United States government for the steamboat Louisville, we, jointly and severally, or either of us, promise to pay to William Fitch or his order, the sum of one thousand dollars out of the money, as soon as collected from the government of the United States, on said claim for said steamboat Louisville.

JOS. COMBS.
S. G. CABELL."

The bill shows that Combs died in the City of Washington on May 10, 1879; that he was intestate as to personal property, but testate as to real property; that he devised certain real estate in the City of Washington to his wife, Emma M. Combs, in fee simple. That Columbus Alexander was appointed administrator of the personal estate of Joseph Combs, and that he executed for a valuable consideratinn an assignment of this instrument to James Jackson, jr., the plaintiff, on the 26th of April, 1881, some two years after the death of Combs.

The bill further alleges that Combs, in his lifetime, collected the claim of $82,000 from the Government of the United States; that it was paid to him on the 27th of January, 1871; but that the first information had by the plaintiff of its payment was derived from a newspaper paragraph, in the City of Washington, on or about April 8th, 1882. The averment is made that Fitch used all proper means to ascertain as to the collection of said claim, and it is charged that Combs and Cabell, and the defendant, Emma M. Combs, and the said Yznaga, well knew about the collection of said claim, and that the knowledge of its collection was fraudulently concealed from the plaintiff and said Fitch by said named parties with intent to avoid or escape, if possible, the payment of the money due under the agreement, and with the intention or hope that, by permitting a sufficient time to elapse, the Statute of Limitations might be pleaded in any suit brought to enforce said agreement.

The plaintiff avers that Combs, as soon as he collected this claim, became, by virtue of the contract between Combs and Fitch, the trustee of the plaintiff, and that it was the duty of Combs to make known the payment of the claim and to pay to Fitch or his order the $1,000 out of that sum. He charges that no part of it has been paid. That the personal estate is insufficient to pay it, and that there is due him the sum of $1,000 with interest from January 27, 1871, the day of the payment to Combs of the $82,000, and he therefore prays that the realty in the possession of Mrs. Combs may be subjected to the payment thereof.

The issue presented to the Court is raised by the answer of the defendant, Emma M. Combs, the only part of which necessary to be considered is as follows:

"In further answer this defendant says that she is informed and believes, and therefore charges, that plaintiff is the son-in-law of said Fitch, and that said written obligation was transferred to said Jackson without any consideration being paid therefor; that said claim described in said bill of complaint is stale, unjust and inequitable, and that the said supposed cause of action described in said bill did not accrue to plaintiff at any time within three years before the commencement of this suit."

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The answer denies all charges of fraud.

Evidence was taken by the parties on the issue joined between them, relating principally to the question of the Statute of Limitation and to the question made by the plaintiff in his bill, that the payment of this money to Combs by the Government was fraudulently concealed from Fitch, so that for more than three years after the death of Combs, Fitch was in ignorance of the fact of payment.

Counsel for the plaintiff, in his argument, while disclaiming that he is entitled to recover this money from the defendant upon the ground that Combs was constituted by this agreement a trustee, and that the money collected by him was a trust fund; yet claims that the relation of trust, nevertheless, did exist, and that for the purpose of preventing the Statute of Limitations running against this claim, the Court should hold that such trust relation bound the obligors and their representatives to make disclosure of the payment of the claim.

In our opinion, however, this instrument was nothing more than an ordinary agreement binding Combs to the payment of $1,000 out of this fund when collected. It did not create the relation of trustee and *cestui que trust* between these parties, nor did it impose any condition upon Combs in relation to the matter different from that of an ordinary debtor. While he had no right to use any artifice to conceal from Fitch the fact of the payment of this money, it was not his duty to seek Fitch to inform him that it was paid.

The money was collected from the Navy Department of the United States, so far as we are advised by the record, in the usual mode in which such claims are collected. There is no proof that inquiry was ever made of Combs during his life-time as to whether the money had been paid; nor is there any proof that Combs ever used any artifice whatever to conceal the fact of payment from Fitch, or that there was any fraudulent concealment of the fact of payment by either Mrs. Combs, or Cabell, or Mr. Yznaga, who was the attorney of Combs during his life-time. In fact, the evidence shows that none of these parties except Combs knew anything about the payment of this money at an earlier date than Fitch and the plaintiff. It appears from the evidence that Combs himself, after the payment of this money and until the time of his death, was most, if not all of the time, absent from the City of Washington, and it does not appear that any inquiry was made of him as to whether he had collected this money or not. Fitch could easily have put Combs in such a position that his concealment of the fact would have been fraudulent, by addressing to him an inquiry on the subject. A refusal to answer, or false information, would have taken the case out of the statute. It is in evidence that Mr. Cabell, a short time after the payment of this money, went to Fitch and sought to take up this paper by offering him ten cents on the dollar for it; which sum Fitch refused to receive; but all the evidence is to the effect that Cabell did not then know that the money was collected, and did not afterwards, until he saw the article in the newspaper referred to in the bill.

Our attention has been called by counsel for the plaintiff to several cases supposed to be in point, but upon examination of them we find that they are all to the effect that where an action is brought against a party for the *commission* of fraud, the statute will not run, even though the defendant has not been guilty of any active efforts to conceal the cause of action, but that the action may be maintained for the fraud at any time within the statutory period after its discovery by the plaintiff, the only qualification being that the plaintiff should have exercised reasonable diligence under the circumstances to discover the fraud. But that is very different from the case at bar. This is in effect simply an action to recover upon the contract. The Statute of Limitations having been pleaded, it is replied that the defendant fraudulentlly concealed the fact that the cause of action had accrued. This is not the exact form, but is the legal effect of the issue as presented. Under such circumstances the rule of law is that unless by virtue of the contract itself, or by some relation of the parties, the defendant was under a duty to make known the fact of payment, the defendant's mere silence amounting to nothing more than non-action, is not such a fraud upon the plaintiff as entitles him to complain. There was no duty resting on Combs to seek Fitch to make the fact known that he had collected this money, and he was guilty of no active fraud, nor of any act the tendency of which would be to deceive, but merely, as far as the evidence shows, maintained silence upon the subject.

The decree of the Court in Special Term is affirmed and the bill dismissed.

SANFORD LEWIS.
vs.
THE WASHINGTON AND GEORGETOWN R. R. CO.

Law No. 25,416.

The CHIEF JUSTICE, JUSTICES JAMES and MERRICK sitting.

Decided October 15th, 1888.

1. Where no cause of action is stated in the original declaration but it is shown for the first time in an amendment thereof, a plea of the Statute of Limitations relates to the time of the filing of the amendment. *Affirming* Johnston *vs.* The District, 1 Mackey, 427.
2. Where, however, the original declaration states a cause of action, but does it imperfectly and thereafter an amendment is filed, a plea of the Statute of Limitation will relate to the time of the filing of the original declaration.

Demurrer to a plea of the Statute of Limitations to an amended declaration. Certified to the general term for hearing in the first instance.

THE CASE is stated in the opinion.

MESSRS. WM. A. COOK and C. C. COLE for plaintiff.

MESSRS. ENOCH TOTTEN and WALTER D. DAVIDGE for defendant.

MR. JUSTICE MERRICK delivered the opinion of the Court:

This case was certified to this Court to be heard in the first instance upon a demurrer to the plea of the Statute of Limitations. The plaintiff had

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filed his declaration alleging that he had been injured by the act of a conductor on the Washington & Georgetown Railroad, by being thrown upon the ground the 5th day of June, 1884, through the carelessness of the conductor operating the car; that his right arm was fractured; that he was badly bruised and injured; and that in consequence he has been confined to his bed and permanently disabled.

In the progress of the cause the plaintiff found it necessary or, at least, supposed it necessary to amend his declaration, upon the ground that the first declaration was not sufficiently explicit in averring affirmatively that the conductor was acting as the agent of the defendant, and that the party injured was being carried for hire. Leave was granted by the Court, and the amendment was made to supply these defects or supposed defects in the original declaration. Thereupon the Satute of Limitations was pleaded as of the time when the amended declaration was filed. To that plea a demurrer was interposed upon the ground that the Statute of Limitations was not referable to the time when the amended declaration was filed, but was referable to the date of the institution of the suit.

Had there been no cause of action whatever stated in the original count, then, upon the authority of the case which was referred to in argument (Johnston *vs.* The District of Columbia, 1 Mackey, 427), the plea of the Statute of Limitations would relate to the time when the amended declaration was filed. But that is not this case. The declaration here was not a declaration totally defective by reason of failing to state any cause of action. It was at the most a declaration stating imperfectly a good cause of action, and the difference is well recognized by the books between the defective statement of a good cause of action and the statement of a defective or bad cause of action. The one is capable of amendment; the other, of course, is not. Or, to test the matter in another way; the one will be supported by a motion in arrest of judgment on a verdict for the plaintiff, while the other will not be so supported.

Without scrutinizing very much in detail the first count in the original declaration, as compared with the amendment, it is manifest to the Court that the same cause of action is mentioned both in the original and the amended declaration. The earmarks are too unmistakable not to identify the transaction as being the same; and so long as the Court can see, when an amendment is proposed, that it states the same cause of action which was at first imperfectly stated, the Statute of Limitations will be referable to the date of the institution of the suit.

The demurrer is, therefore, sustained and the cause is remanded for further proceedings.

A WILL directed that if the son of the testator should die without children, then on the death of testator's widow, and of his son, the property should go to a nephew. The son was sentenced to imprisonment in the State prison for life, and the widow subsequently died. *Held*, that 2 Revised Statutes of New York, 701, section 20 (Pen. Code, sec. 708), providing that a person sentenced to imprisonment for life "shall thereafter be deemed civilly dead," did not operate to vest title or right of possession in the nephew.

COURT OF APPEALS OF MARYLAND.

BOWIE *vs.* HALL.

Decided November 23, 1888.

A promissory note provided that the makers would pay all costs of collection, including attorney's commissions, and that such costs and commissions should be included in the judgment upon the note in case of suit. These provisions render the note non-negotiable.

But such provisions are enforceable, and are not in violation of law or public policy. A judgment may be rendered upon the note, including interest, costs and commissions.

APPEAL from the Circuit Court for Prince George's County.

JOSEPH K. ROBERTS and WILLIAM STANLEY, for appellant.

GEORGE C. MERRICK, for appellees.

MILLER, *J:* In this case suit was brought by the payee against the makers of the following note or instrument in writing:

"$1,060.—UPPER MARLBORO, MAY 4th, 1887. Three months after date we jointly and severally promise to Francis M. Bowie, at the National Bank of the Republic, of Washington, D. C., the sum of one thousand and sixty dollars, value received, with interest. And we further promise that if said note is not paid at maturity we will pay all cost or expense of collecting the same, including attorney's commissions, the same to be calculated and included in the judgment recovered upon said note in case of suit.—C. Hall, H. W. Clagett."

All errors in pleading were waived, but before the trial day one of the defendants paid the full amount of the note and interest but refused to pay attorney's fees. This, therefore, was the only question in controversy to be decided by the Court. The Court below decided against the recovery, and gave judgment in favor of the defendants. From that judgment the plaintiff has appealed.

In Maryland Fertilizing and Manufacturing Company *vs.* Newman, 60 Md., 584, this Court held that a similar stipulation destroyed the negotiability of the note, but by no means decided that it was a void contract. On the contrary, after citing the cases of Bullock *vs.* Taylor, 39 Mich., 137, and Witherspoon *vs.* Musselman, 14 Bush., 214, where a contract of this character in a note had been treated as a stipulated penalty and declared void, the Court said: "But to declare such stipulations void in order to maintain the negotiable character of the note is certainly a strong thing for the Court to do, unless it clearly contravened some established principle of law. Parties have the right to make their contracts in what form they please provided they consist with the law of the land, and it is the duty of the courts so to construe them, if possible, as to maintain them in their integrity and entirety. While the instrument under consideration may not be a valid negotiable promissory note it does not by any means follow that it is not a valid contract of another description." The Court, then, though they affirmed the judgment, remanded the cause in order to allow the plaintiff to amend his declaration and to declare on the special agreement as assignee thereof, instead of suing, as he had done, as endorsee of

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the note. And in Maus *vs.* McKellip, 38 Md. 238, a like stipulation in a mortgage was expressly upheld.

But even if the question were a new one, we can discover no ground whatever upon which to declare such a contract void. In the before us the interest on the sum lent up to the maturity of the note is less than half the most reasonable commissions the lender will have to pay an attorney for collecting it by suit or otherwise, so that by default of the borrower he would lose all the interest and part of the principal. What possible objection can there be in allowing parties to contract against a result like that? In our judgment, such contracts violate no principle of law or public policy. It seems to us simply a stipulation intended to secure punctuality in the performance of the contract, and as such contains no element of oppression to the borrower. Its tendency, in fact, is to help him to borrow at a less rate of interest, as puntuality in payment is usually taken into consideration in fixing the terms of a loan. Nor can it be regarded as a cover to usury, for its effect is clearly not to put any money above the legal rate of interest into the pocket of the lender, but merely to enable him to get back his money with legal interest and nothing more.

We are not aware of any case in which such a contract has come before an English court, and this may result from what we believe to be the fact, that the practice of remunerating attorneys and solicitors for their professional services by a certain percentage on money collected by them for their clients by suits in court, has never prevailed in England. In this country, however, such a practice has been commonly adopted. Contracts, therefore, like the present are not unusual here, and have become numerous in recent times. In some cases their validity has been denied by the courts, but it seems they are sustained by a decided preponderance of authority. Counsel for appellant have, with commendable diligence, collected a number of authorities sustaining them (which we give), and doubtless others to the same effect may be found: Huling *vs.* Drexel, 7 Watts, 129; McAllister's Appeal, 59 Penn., 204; Smith *vs.* Silver, 32 Ind.; Clauson *vs.* Munson, 55 Ill., 394; Camp, Glover & Co. *vs.* Randle & Co., 81 Ala., 249; Miner *vs.* Paris Exchange Bank, 53 Tex., 559; McGill *vs.* Griffin, 32 Iowa, 445; Chase *vs.* Whitmore, 68 Cal., 545; Peyser *vs.* Cole, 11 Oregon, 39. We are, therefore, of opinion the learned Court below was in error in refusing to allow the plaintiff to recover these commissions in this case.

Judgment reversed and new trial awarded.

THE COURTS.

SUPREME COURT OF THE UNITED STATES.

December 10.

George P. Goff, of Washington, D. C., and Ira W. Buell, of Chicago, Ill., were admitted to practice.

46. The Ger. Sav. B., of Davenport, *vs.* County of Franklin, Ill. Decree affirmed with costs.

3. Original. Ex parte: In the matter of the Chateaugay Ore and Iron Company, petitioner. Petition for writ of mandamus granted.

943. The trustees of Dublin Township, Ohio, *vs.* The Milford Five-Cent Savings Institution. Dismissed for want of jurisdiction.

92. The Fars'. Friend Man'f'g Co. *vs.* The Challenge Corn Planter Co. Decree affirmed with costs.

96. Purdy, etc., *vs.* The Town of Lansing. Judgment affirmed with costs.

90. Metcalf *vs.* The City of Watertown. Judgment reversed—costs to be paid by the plaintiff in errror—and cause remanded with directions for such further proceedings as may be consistent with law.

72. Marsh et al. *vs.* Nichols, Shepard & Co. Decree affirmed with costs.

95. Nichols, Shephard & Co., etc., *vs.* Marsh et al. Dismissed with costs.

49. The Goodyear India Rubber Glove Man'f'g Co. et al. *vs.* The Goodyear Rubber Company. Decree reversed with costs; cause remanded with directions to dismiss the bill.

40. Glasgow, etc., *vs.* Baker et al. Judgment affirmed with costs.

491. Randolph *vs.* The Quidneck Company et al. Motion to rescind order of dismissal granted, provided new parties are made within thirty days and upon payment of costs of motions.

984. G. B. List *vs.* The Commonwealth of Penna. Case abated and writ of error dismissed.

993. U. S., ex rel. Charles R. Miller, *vs.* John C. Black, Commissioner of Pensions. Motion to recall mandate and amend judgment granted.

SUPREME COURT OF THE D. C.

GENERAL TERM.

December 10.

Benter *vs.* Patch. Decree below reversed. Opinion by Mr. Justice Merrick.

Hinds *vs.* Hinds. Judgment below affirmed. Opinion by Mr. Chief Justice Bingham.

Droop *vs.* Metzerot. Decree below affirmed except as to certain points. Opinion by Mr. Chief Justice Bingham.

In re O. H. Morrison's estate. Cause placed on hearing.

IN EQUITY.—New Suits.

December 1.

11475. John R. Whitmore *vs.* John E. Bayliss. To restrain defendant from interfering with possession of premises. Com. sol., T. H. Fitnam.

11476. Annie E. Johnston *vs.* Thurston B. Johnston, trustee, et al. For assignment. Com. sol., R. R. Perry.

11477. Frances A. Parnell et al. *vs.* Mary W. Joyce et al. To substitute trustee. Com. sol., Fillmore Beall.

December 3.

11478. Rebecca Seymour *vs.* Charles H. Seymour. For divorce. Com. sols., Riddle, Davis & Padgett.

11479. Katè A. Bastianelli et al. *vs.* Thurston B. Johnston, trustee, et al. To administer trust. Com. sol., R. R. Perry.

December 4.

11480. J. William Lee et al. *vs.* Chauncey Goodrich et al. Creditor's bill. Com. sol., B. F. Leighton.

11481. Lottie Rollow *vs.* Frank T. Rollow. For divorce. Com. sol., W. P. Williamson.

11482. Robert Leitch et al. *vs.* Margaretha Kremb. To enforce mechanic's lien. Com. sol., John Ridout.

11483. Ellen F. Osborn et al. *vs.* Mary H. Shoemaker et al. For partition. Com. sol., C. H. Cragin, Jr.

11484. William C. Clabaugh et al. *vs.* Lillie W. Clabaugh. To sell lots. Com. sol., E. B. Hay.

11485. Augustus Burgdorf *vs.* William C. Clabaugh et al. For conveyance. Com. sol., Same.

CIRCUIT COURT.—New Suits at Law.

December 4.

29160. Ann E. Creeks *vs.* Richard Bond et al. Ejectment. Plffs attys, Edwards & Barnard.

29161. Carter, Rice & Co., corporation, *vs.* Henry W. Blair. Note, $3,000. Plffs atty, Charles P. Thompson, Jr.

29162. Langdon H. Marsh *vs.* Sarah L. Jones et al. Note, $300. Plffs atty, C. H. Armes.

December 5.

29163. Dorsey Clagett, administrator, *vs.* The Richmond and Danville R. R. Co. Damages, $10,000. Plffs atty, William H. Dennis.

29164. Harry B. Lacky *vs.* The National Life and Maturity Association of Washington, D. C. Account, $249.20. Plffs attys, Carrington and Williamson.

29165. William B. Noble, executor, *vs.* George Taylor. Bond, $52,500. Plffs atty, Nath. Wilson.

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Notice of Election.

THE REGULAR MEETING of the STOCKHOLDERS OF THE LAW REPORTER COMPANY of Washington City, will be held at the office of said Company, No. 503 E STREET, NORTHWEST, in said City, on Monday, January 14, 1889, for the election of Trustees of said Company. Polls will be open from 12 M. until 1 o'clock P. M., of said day.

WM. F. MATTINGLY, President.

FRANKLIN H. MACKEY, Secretary.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Edward Lloyd, Richard B. Lloyd. Francis B. Lloyd, Rosina Mackey, Rosalie M. Bradford, Malcolm Cudlip and Joanna Mackey, Plaintiffs, *vs.* Mercy M. Gray, Cordelia Linn, Arthur Costello, George Angel Costello and Benton Horne, Defendants. } At Law. No. 28931. Docket 33.

On motion of the plaintiffs, by Mr. Franklin H. Mackey their attorney, it is ordered that the defendant, Mercy M. Gray, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover the possession of the whole of original lot nine (9), in square six hundred and fifty-three (653), in the City of Washington, in the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Alice Dulaney et al. *vs.* Thomas A. Dulaney et al. } No. 11467. Docket 28.

On motion of the plaintiffs, by Mr. B. F. Leighton, their solicitor, it is ordered that the defendants, Thomas A. Dulaney and Robert H Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of the real estate in complainants' bill described, and to substitute a trustee in place of the said Robert H. Ward, trustee under a certain deed of trust set aside in said bill.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Theresa M. Lynch *vs.* Daniel J. Lynch. } No. 11443. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, Daniel J. Lynch, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of matrimony with the said defendant on the ground of desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of John M. Graham, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1888.

ELIZABETH GRAHAM, Ex'x, 704 13th st. n. w.
50 No. 8304. Ad. D. 14. D. E. Cahill, Proctor.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of December, 1888.

Laura A. Blincoe *vs.* Joseph Blincoe. } No. 11457. Eq. Docket 28.

On motion of the plaintiff, by Mills Dean, Esq., her solicitor, it is ordered that the defendant, Joseph Blincoe, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bonds of matrimony between the plaintiff, Laura A. Blincoe, and the defendant, Joseph Blincoe, on the ground of desertion.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of December, 1888.

William L. Bramhall et al., Trustees, Complainants, *vs.* Rebecca Britton et al. Defendants. } No. 11444. Eq. Docket 28.

On motion of the plaintiffs, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendants, Rebecca Britton, Elizabeth M. Hardy, Mary J. Armstrong, Annie M. Smith, Clotildis Millard, Frances Millard, Eleanor A. Millard, Joshua J. Millard, Bessie Millard and Mary J. Burrows, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to quiet title to lot numbered eighteen (18), in square numbered one hundred and forty (140), situate in the City of Washington, in the District of Columbia, in the complainants'.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 7th, 1888.

In the case of Edward Godey, Executor, &c., of John W. Godey, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 28th day of December, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
50 No. 2860. Ad. D. 13. F. W. Jones, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis Kurtz, Sr., *vs.* Louise Kurtz et al. } Equity. No. 11284. Doc. 28.

Robert H. T. Leipold, the trustee herein, having reported the sale of the following described real estate, to wit: lots numbered twenty-four (24) and twenty-five (25), in square No. 480, which said sale and property is more fully described in proceedings and the trustee's report, and that the said property was sold to Charles H. Krey, at and for the sum of $4,900.00 cash.

It is, this 12th day of December, 1888, ordered and decreed, on motion of the solicitor for the complainant, that said sale be confirmed, unless cause to the contrary be shown on or before the 15th day of January, 1889.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
50 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **John Dade**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 17th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 17th day of November, 1888.

JOHN F. DADE, Adm'r, 411 1st st s. e.

47 H. Randall Webb, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Anna M. Furmage vs. **Mary Furmage et al.** } No. 10975. Eq. Doc. 27.

Irwin B. Linton, the trustee herein, having reported to the Court that he has sold to Lewis C. Rauterberg sub-lots 36 and 37, in square 479, in the City of Washington, containing 4,565 square feet at 84 cents per square foot, and sub-lot 38, in said square, to Frank E. Waring, for $2,455, the said sales aggregating $6,289.60, but being conditioned upon the furnishing of title-insurance policies to the purchasers out of the proceeds of sale, it is, this 19th day of November, A. D. 1888, ordered that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 19th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk.

47 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Thomas H. Dorsey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 13th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 13th day of October, 1888.

ALLENE S. DORSEY, Adm'x, 481 Pa. ave. n. w.

47 No. 3261. Ad. D. 14. Richard P. Evans, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary E. Thomas and others vs. **W. W. Thomas and others.** } Equity No. 10,896. Doc. 27.

Ordered, this 20th day of November, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee, of the real estate described in the said report, filed November 19th instant, be, and the same is, ratified and confirmed, unless cause to the contrary be shown on or before the 20th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,010.00.

W. S. COX, J.

A true copy. Test: R. J. MEIGS, Clerk,

47 By L. P. WILLIAMS, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of November, 1888.

Hattie V. Turner vs. **George Turner.** } No. 11369. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. Guilford White, her solicitor, it is ordered that the defendant, **George Turner**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the grounds of habitual drunkenness, desertion and non-support.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS Clerk, &c.

48 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 21st, 1888.

In the matter of the Estate of **John H. Barker**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased having been made by Julia A. Barker.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.

Test: DORSEY CLAGETT, Register of Wills.

48 W. W. Boarman, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Horace S. Johnston**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of December, 1888.

THURSTON B. JOHNSTON,
WALTER A. JOHNSTON,
Executors,
1000 Va. ave. s. w.

50 No. 3278. Ad. D. 14. Claughton & Claughton, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ira N. Burritt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1888.

PAYSON BURRITT, Ex'r, 219 C st. s. e.

50 No. 3300. Ad. D. 14. Geo. F. Appleby, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Michael Deviney**, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October 1888.

her
KATE ⋈ DEVINEY, Adm'x, 1038 5th st. n. e.
mark.

50 No. 3247. Ad. D. 14. Neal T. Murray, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of **John Sullivan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1888.

her
MARY ⋈ SULLIVAN, Ex'x, 925 N. J. ave. n. w.
mark.

50 No. 3250. Ad. D. 14.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of **Charles D. Pennebaker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1888.

ANNA E. PENNEBAKER, Ex'x, 1341 Corcoran st.

49 No. 3179. Ad. D. 14. R. S. Davis, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Flodoardo W. Howard**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of November, 1888.

EDW. W. DONN, Adm'r, 935 F st. n. w.

49 No. 3274. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **America Willey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of November, 1888.

GEO. R. WILLEY, Ex'r, 225 B st. n. w.

49 No. 3285. Ad. D. 14. Irving Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Anna M. Edds**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 30th day of November, 1888.

SETH SCHELL,
C. W. SCHELL,
Executors,
1341 29th st. n. w.

49 No. 3293. Ad. D. 14. Jesse H. Wilson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **John S. Slater**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of November, 1888.

ANNA M. SLATER, Adm'x, 911 6th st. n. w.

49 No. 3294. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Howard L. Hyatt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 27th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 27th day of November, 1888.

MARY E. HYATT, Ex'x, 233 G st. n. w.

48 No. 3297. Ad. D. 14.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 30th, 1888.

In the matter of the Estate of **Joseph W. Sands**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Henry L. Biscoe.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.

49 No. 3291. Ad. D. 14. S. T. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 30th, 1888.

In the matter of the Estate of **William H. Thompson**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Louis D. Wine.

All persons interested are hereby notified to appear in this Court on Friday, the 28th day of December next at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.

49 Dan'l O'C. Callaghan, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Daniel W. Gottwals**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 22d day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 22d day of November, 1888.

EMILY K. GOTTWALS.
DAVID B. GOTTWALS.
439 Warner st. n. w.

48 No. 3268. Ad. D. 14. L. Cabell Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Milford F. Lackey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 24th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 24th day of November 1888.

MARGARETTA LACKEY, Ex'x, 127 Md. ave. n. e.

48 No. 3296. Ad. D. 14. Wm. W. Boarman, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of December, 1888.

William B. Webb et al. vs. **Mathilda W. Stanton et al.** } No. 11455. Docket 28.

On motion of the plaintiffs, by Mr. H. Randall Webb, their solicitor, it is ordered that the defendants, **Edwin M. Stanton** and **Sophy C. Stanton**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a new trustee to release lot D, subdivision in square 226, from the effects of a deed of trust, made to Edwin L. Stanton, now deceased.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
By M. A. CLANCY, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of Montgomery County, Maryland, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters, Testamentary on the personal estate of **Ellen Haake**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 9th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 9th day of November, 1888.

JOHN T. VINSON, Ex'r.

47 No. 3103. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Frederick F. Whitehead**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 15th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 15th day of November, 1888.

JOSEPHINE S. WHITEHEAD, Adm'x,
2016 R st. n. w.

47 No. 3272. Ad. D. 14. A. B. Duvall, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. Letters Testamentary on the personal estate of **Maria F. Conlan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 29th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 29th day of October, 1888.

RUDOLPH EICHHORN, Ex'r, 639 La. ave.

47 No. 3154. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of November, 1888.

Nellie M. Simmons et al. vs. **Jennie Ramsey et al.** } No. 11396. Eq. Docket 28.

On motion of the complainants, by Mr. John Ridout, their solicitor, it is ordered that the defendants, **Jennie Ramsey** and **James P. Ramsey**, her husband, **Delozier Rittenhouse** and **Dolores Rittenhouse**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before said day.

The object of this suit is to procure partition by sale of certain real estate in the City of Washington, District of Columbia, of which James Davidson died seized.

By the Court. W. S. COX, Justice, &c.

True copy. Test: R. J. MEIGS, Clerk, &c.

47 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 16th day of November, 1888.

James F. Simpson vs. **Sarah Simpson.** } No. 11395. Docket 28.

On motion of the plaintiff, by Mr. Frank P. Closs, his solicitor, it is ordered that the defendant, **Sarah Simpson**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is for a divorce, instituted by the plaintiff, James F. Simpson, against the defendant, Sarah Simpson, on the ground of desertion of the plaintiff by the defendant for the uninterrupted space of more than two years.

W. S. COX, Justice.

47 True copy. Test: R. J. MEIGS, Clerk, &c.

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16	Stock Transfer,	2	10	75
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BELL, W. PEIRCE, *Counsel in Patent Causes* 625 F St. n. w.

BLAIR, JOHN S., 1420 F St. n. w.

DUMONT, N., 629 F St. n. w.

EDWARDS & BARNARD, 500 5th St. n. w.

MACKEY, FRANKLIN H., 505 D St. n. w.

SAVILLE, JAMES H., 1419 F St. n. w.

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OHIO.

WING, GEORGE C., 89 Euclid Ave., Room 8, Cleveland.

JOHN H. VOORHEES,

ATTORNEY AT LAW,

Solicitor of Patents and Counsel in Patent Cases.

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Abbott's U. S. Practice, vols. 1, 2.
Addison on Contracts, 1847.
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WASHINGTON, D. C., - - DECEMBER 19, 1888

Actionable Boycotting.

DEFOE, in the "Complete English Tradesman," while treating "of the ordinary occasions of the ruin of tradesmen," failed to include the most fatal, competition. The life of trade though it be, competition forms the fiercest danger to be encountered in commerce now-a-days, the most difficult to encounter judiciously and without entailing disaster no less lethal than any it is attempted to counteract. It becomes a war to the knife, in which the defender's weapon may wound him worst. But, in the main the antagonism of forces fructifies in advantage as Mr. Justice Grove not long since lectured to demonstrate; and in point of public policy, competition, too, should be encouraged, rather than checked. The public reap the benefit, as the trader who survives in the struggle for existence wins the reward. And trade itself is fostered in the ultimate result, though for a time commodities may be vended beneath cost price, or passengers carried for next to nothing. Yet the ultimate object of competition is practically to crush competition, and in excess its operation may readily infringe on the principle of public policy that stands opposed to the creation of monopolies; while if promoted by confederation—of which the new American development of "Trusts" (treated on in the ensuing article) furnishes an illustration, only more formidable than is supplied by certain English syndicates—so as mischievously to prejudice the public or oppress individuals; the law against conspiracy may be overstepped.

"No doubt," said Lord Coleridge, C. J., in the case of the Mogul Steamship Company, "whatever be the legal position, there was considerable moral and sensible defense for the defendants' conduct. They were running steamers regularly all the year round from England and China and back, considerably benefiting the commercial community of both countries, and it was clear from the evidence that they could not do this at a profit, and would therefore probably cease to do it at all, unless they could practically monopolise the carrying trade during the tea harvest. It was the large profit they made by keeping up the rate of tea freights which enabled them to give a regular communication during the other months of the year. They contended, therefore, that what they did was not purely selfish—though, of course, self-interest guided them—but that there were real and large public benefits accruing to China and England from the course. For this contention there was some ground." "It must be remembered," he added, "that all trade was and must be in a sense selfish; trade being limited, nay, the trade of a particular place or part being limited, what one man gains another loses."

In the hand-to-hand war of commerce, as in the conflicts of public life, whether at the Bar, in Parliament, medicine or engineering, men fight on without much thought of others, except a desire to excel and defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business. The line is difficult to draw, but he could not say that it had been passed by defendants—viz., the line which separates the reasonable and legitimate selfishness of traders from wrong and malice. The exclusion of plaintiffs in 1885 was not from any personal malice or ill-will, but because they were determined, if they could, to keep the trade to themselves, and if they permitted persons like plaintiffs to share it, they thought honestly, and, as it turns out, correctly, that for a time at least, there would be an end of their gains." And as to the combination being unlawful, as in restraint of trade, why, he observed, "it was no more so than if two tailors in a village agreed to give their customers 5 per cent. off their bills at Christmas on condition of their dealing with them alone." As Coke remarked, every man's trade maintains his life, and to dispossess him of one is to dispossess him of the other (Case of Monopolies, 11 Rep., 87 a); but, as it was put in Rogers *vs.* Rajendro Dutt (13 Moo. P. C., 241), not cited in Lord Coleridge's judgment, "interference with a man's trade by fair competition is never actionable. The loss in such case is not, in fact, caused by wrong, but by another's exercise of his undoubted right. * * * It is essential to the maintenance of an action of tort that the act complained of should be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right; merely that it will do him harm is not enough." "It could not be, nor was it denied," said the Lord Chief Justice, in the case under notice, "that to ground this action there must be an element of unlawfulness in the combination, and that this element must exist alike whether the combination was the subject of an indictment or of an action. But in an indictment it sufficed if the combination existed and was unlawful, because it was the combination itself which was mischievous and gave the public an interest to interfere by indictment. Nothing need be actually done in furtherance of it. In the Bridgewater case referred to at Bar nothing was done in fact, yet a gentleman was convicted because he had entered into a combination, from which, on the spot, he withdrew altogether. No one was harmed, but the public offence was complete. This was in accordance with the express words of Bailey, J., in R. *vs.* De Berenger (3 M. & S., 76). It was otherwise in a civil action. It was the damage resulting from the unlawful combination, and not the unlawful combination itself, with which the civil action was concerned. It was not every combination which was unlawful, and if the combination were lawful—*i. e.*, for a lawful end pursued by lawful means—or, being unlawful, there were no damage from it

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to plaintiffs, the action would not lie. The term 'damage' being used in the sense of legal injury, mere loss or disadvantage will not sustain an action. Or, to state the same proposition differently, if the combination were unlawful, then the parties to it commit a misdemeanor; and if as the result a private person receives private injury, that gives such person a right of private action. The object, therefore, of the combination, as well as the means adopted, must be examined to determine its legality. Here it was plain that if the object were unlawful, or, if lawful, but the means adopted were unlawful, and if there were a combination either to effect the unlawful object or to use the unlawful means, then the combination was unlawful, and those who joined it misdemeanants, and a person injured by their misdemeanor had an action in respect thereof."

"Accordingly, the plaintiffs had to establish either that the act of the defendants, in offering terms specially favorable to such customers alone as dealt with the defendants alone, was in itself an unlawful act, or that the object of that act, to injure the plaintiffs, rendered it unlawful. It was not in itself an unlawful act. The defendants had a right, by lawful means, to push and reap a profit from their trade, and to keep it in their own hands and exclude others from its benefits. "Among these means was certainly included the inducing, by profitable offers, customers to deal with them rather than with their rivals. It followed that they might, if they think fit, endeavor to induce customers to deal with them exclusively, by giving notice that only to exclusive customers will they give the advantage of their offers. It did not matter that the withdrawal of advantages was out of all proportion to the injury inflicted on those withdrawing them by the customers who declined to deal exclusively dealing with other traders." And neither was the act, resulting in damage, rendered unlawful by its object, though it was "too late to dispute that a malicious combination to ruin a man in his trade might be ground for such an action as this." The answer—arrived at after much trouble and doubt—was that the combination here was not such; the plaintiffs had failed to prove that their exclusion from the conference was caused by personal malice or ill-will towards them. But, it is here particularly that the line is most difficult to draw, and it is satisfactory to understand that the case is likely to be taken to the Court of Appeal, and eventually to the House of Lords.

As to the effect of the decision in connection with boycotting as practiced in this country, the *Law Notes* observes that it "does not go any way towards establishing the legality of what is known as boycotting in Ireland. In those cases the boycotting is clearly effected by illegal means, and the object is to accomplish an illegal result;" while the *Justice of the Peace* says: "It has been supposed by some that the decision in this case would have some bearing on the legality of what is called 'boycotting,' but without in the least expressing an opinion upon a matter so closely connected with political passions, it is to observe that in this case there was no question whatever as to the legality of persons who exercise a public employment refusing to deal with a particular class of the public. The 'conference' never refused to deal with any exporter, but merely offered specially good terms to a particular class, namely, those who did not deal with non-conference shipowners. It is evident, therefore, that the question of law involved in this case was nothing like so broad as that which has been raised with reference to boycotting. —*Irish Law Times.*

SUPREME COURT OF THE UNITED STATES.

M. L. BUNDY, Receiver of the Hot Springs National Bank, of Hot Springs, Arkansas, *Appellant*,

vs.

WILLIAM M. COCKE.

Appeal from the Circuit Court of the United States for the District of Kentucky.

[November 12, 1888.]

In a bill of complaint brought by the receiver of a national bank against a husband and wife to subject her separate estate to the payment of a *pro rata* assessment made by the Comptroller of the Currency upon stock in her name on the books of the bank at the time of its suspension, the allegation that when the bank suspended and ceased to do business, she "was the owner of 100 shares of the capital stock thereof, &c.," sufficiently alleges that she had the capacity to become the legal owner of such stock at the time she became such owner.

MR. JUSTICE BLATCHFORD delivered the opinion of the Court:

On the 4th of February, 1885, Martin L. Bundy, receiver of the Hot Springs National Bank, of Hot Springs, in the State of Arkansas, filed his bill of complaint in the Circuit Court of the United States for the District of Kentucky, against William M. Cocke and Amanda M. Cocke, his wife, and James Flanagan and Sue Flanagan, his wife, all of the defendants being alleged in the bill to be citizens of Kentucky.

The bill alleges that, on the 1st of March, 1884, the bank was a corporation created and organized under the national banking statutes, with a capital stock of $50,000, divided into 500 shares of $100 each at their par value; that it had its office of discount and deposit in the city of Hot Springs in the State of Arkansas; that it suspended the business of banking on the 27th of May, 1884; that the plaintiff was duly appointed receiver of the bank on the 2d of June, 1884, and that, on the 25th of July, 1884, the Comptroller of the Currency determined that it was necessary to enforce the individual liability of the shareholders in the bank, to the amount of 50 per centum of the par value of its capital stock, "and did make an order and requisition on the stockholders and each and every one of them, equally and ratably, as the shares were held and owned by them respectively at the time said bank suspended and ceased to do business," and directed the plaintiff "as such receiver" to take the necessary legal proceedings to enforce such assessment against the shareholders in said bank, and each and very one of them.

The bill then contains the following allegation: "And your orator would further state, that, on the 27th day of May, A. D. 1884, when

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said bank suspended and ceased to do business, Amanda M. Cocke, wife of William M. Cocke (both of whom are made defendants hereto), was the owner of one hundred shares of the capital stock thereof, of the par value of ten thousand dollars, and the same still stands in her name on the books of the said association, on which the equal and ratable assessment and requisition made by the Comptroller as aforesaid, is five thousand dollars, with interest thereon from the said 25th day of July, 1884; that said defendant Amanda is possessed of property in her own right amply sufficient to pay said assessment, but utterly refuses to do so."

Then follows a like allegation as to Mrs. Flanagan, as the owner of twelve shares of the stock.

The prayer of the bill is that an account be taken of the shares of stock held by each of the married women defendants, respectively, at the date of suspension and the assessment and requisition made by the Comptroller of the Currency thereon, and that a decree be made for the payment thereof out of the separate property held by the married women defendants in their own right, as each may be found indebted, with interest.

Mr. and Mrs. Cocke filed a demurrer to the bill for want of equity and also for multifariousness. The plaintiff then amended the bill by striking out the names of Flanagan and his wife as defendants; and, in July, 1885, he filed a bill of revivor, based on the fact of the death of Mrs. Cocke in March, 1885.

The bill of revivor alleges that when Mrs. Cocke died she was a citizen of Kentucky, and was domiciled and resident therein; that she left a will whereby her husband was appointed her sole executor and her sole residuary legatee and devisee; that the will had been duly proved and recorded in the proper court in Kentucky; and that Mr. Cocke had accepted the terms of the will and taken upon himself the office of such executor. The bill prays for the revival of the suit against Mr. Cocke as devisee and legatee of his wife and as sole executor of her will, and for relief against him out of all assets received or held by him as devisee or legatee of his wife, or as executor of her will.

Mr. Cocke appeared and filed a demurrer to the bill of revivor for want of equity. The cause was heard on the demurrer to the bill and the demurrer to the bill of revivor. The Court sustained both of the demurrers, giving to the plaintiff time to amend his bill, and, he declining to do so, a decree was entered dismissing it. From that decree the plaintiff has appealed.

From the opinion of the Court, accompanying the record, the ground of the dismissal appears to have been that the bill was defective in not alleging that, at the time Mrs. Cooke became a stockholder, she had the capacity to became a stockholder. But we think the bill is not open to this objection. It alleges that, at the time the bank suspended, Mrs. Cocke "was the owner" of the 100 shares. This is an allegation that she was then the lawful owner of those shares, and had lawfully become such owner, with the capacity to become such owner at the time she became such owner. It is consistent with this allegation, that she may have owned the shares before she married Mr. Cocke, or that, when she became such owner, if she was then the wife of Mr. Cocke, she had the right to become such owner by virtue of the laws of the State of Arkansas, where the bank was located, in connection with the provisions of the statutes of the United States in regard to national banks.

Section 4191 of the Digest of the Statutes of Arkansas. published in 1874, (chap. 93, p. 756). provides as follows: "Sec. 4194. A married woman may bargain, sell, assign, and transfer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account; and the earnings of any married woman, from her trade, business, labor or services shall be her sole and separate property, and may be used or invested by her in her own name; and she may alone sue or be sued in the courts of this State on account of the said property, business or services." Under this provision, if it was in force at the time of the transaction, it would seem that Mrs. Cocke, when a married woman, might lawfully have either subscribed for or taken an assignment of the shares, they being shares of a national bank in Arkansas, and the transaction being, therefore, governed by the statutes of Arkansas, unless, under special circumstances, a different rule ought to govern. Milliken *vs.* Pratt. 125 Mass., 374.

As the bill alleges that Mrs. Cocke is possessed of property in her own right amply sufficient to pay the assessment, and as the prayer of the bill is for a decree for the payment of the amount of the assessment out of the separate property held by her in her own right, and as the bill of revivor prays for relief against Mr. Cocke out of the assets received by him as the legatee or devisee of his wife, or as executor of her will, the case is clearly one of equitable cognizance, because it does not appear that she could be sued at law, to reach her separate property. 3 Pomeroy's Eq. Juris., sec. 1099.

The original bill and bill of revivor are sufficient on their faces to call upon Mr. Cocke to answer them, and, when all the facts bearing upon the case are fully developed, the rights of the parties can be properly adjudicated. For that reason, we refrain from considering any of the other questions discussed at the bar.

The decree of the Circuit Court is reversed, and the case is remanded to that court, with a direction to overrule the demurrer to the original bill and the demurrer to the bill of revivor, and to take such further proceedings as may be proper and not inconsistent with this opinion.

EXECUTORS AND ADMINISTRATORS—OPENING ACCOUNTS—LACHES.—An executor passed two accounts in the Orphans' Court in 1863, one in 1875 and one in 1879. In 1887 a petition was filed by the administrators of two legatees to have these accounts opened and re-stated. The legatees were of full age when the accounts were passed, or at least at the date of the passage of the third account. One of them lived until 1882 and the other until 1887, and neither ever made complaint of the accounts or took steps to have them corrected. The objection to the accounts not having been made within a reasonable time, the defense of laches is sustained and the petition is dismissed. Md. Ct. Ap

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Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

THE UNITED STATES EX. REL. JOHN D. MANION,
vs.
THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

At Law. No. 28,426.
Decided May 14, 1888.

THE CHIEF JUSTICE and JUSTICES COX and JAMES sitting.

1. In the issuing of liquor licenses the Commissioners of the District are invested with the power of determining, by rule in advance, in what cases they will in the exercise of their discretion issue licenses, and it is sufficient that such a rule is made with some apparent reason and in a fair exercise of such discretion.
2. It *seems*, however, that if such a rule is a mere arbitrary one, made without any cause or reason for it and is simply oppressive, it would be beyond the power of the Commissioners, and that this Court might interfere by *mandamus* to order the determination of the real merits of a particular case.
3. It is within the power of the Commissioners to declare that no license to sell liquor by retail in a grocery or provision store shall be granted.

PETITION for *mandamus* against Wm. B. Webb and others, Commissioners of the District, to compel the issuance of a liquor license.

THE FACTS are sufficiently stated in the opinion.

MESSRS. WALTER D. DAVIDGE and HENRY WISE GARNETT, for petitioner.

MR. HENRY E. DAVIS, for the District.

MR. CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

This is a petition for a writ of *mandamus* against the Commissioners of the District of Columbia.

The petitioner avers that he has been a resident of this District for twenty-five years; that for fourteen years last past he has carried on the business of a retail grocer and liquor merchant at No. 726 Seventh Street S. W., in the City of Washington, and in said business has sold, among other articles of merchandise, liquor in quantities less than a pint; that he has always taken out all licenses required by law; that he resides with his family on the said premises; and that he has always conducted his business in a decent, proper and law-abiding manner, and there has not been any complaint, or cause for complaint, against him or his place of business. He also says that at the expiration of the last license year, in October last, he filed with the Commissioners of the District an application for a retail liquor license, which application fully complied with and conformed to the law in all respects, and was duly approved by the police; but that the Commissioners refused to consider and act upon his application, for the reason that, on October 18, 1887, they had by order (of which he files a copy with his petition) declared that retail liquor licenses would be refused for the current year to all grocery and provisions stores. He states, further, that he addressed a letter touching his application to the Commissioners (of which also he files a copy as an exhibit), and received a reply showing their refusal to consider his application and the reason therefor; a copy of this reply he files as a third exhibit, and it is thereby shown that the Commissioners did refuse to consider the application of the petitioner for the reason that he was engaged in the grocery business.

In their return to the rule which was issued on this petition the Commissioners claim that, as Commissioners of the District of Columbia, they are the successors to the Board of Metropolitan Police of the District, and are charged with the duty of licensing the sale of liquors, and the keeping of bar-rooms in the District, and that by a provision of law they are permanently vested with a discretion in respect to such licenses; that in the due exercise of their discretion, in October, 1887, they adopted certain rules and regulations for their guidance, and, among other things, resolved that during the license year, beginning November 1, 1887, they would not grant any retail liquor license to the proprietor of any grocery or provision store; and that these rules and regulations were adopted, because in their judgment in the exercise of such discretion, said rules and regulations were proper and necessary to the due limitation of the sale of liquor in the District, and the preservation of peace and good order therein.

They admit that the relator, John D. Manion, in October, 1887, made application to them in due form of law for a license to keep a bar or sample room at the place named in the petition, and that the petition was accompanied by the proper showing of the consent of the majority of the owners and residents in the vicinity, in accordance with the requirements of the law in that behalf; but they say that thereupon said petition was referred for investigation and report to the duly authorized officers of the District of Columbia in that behalf, who among other things, reported to the respondents that the premises in question were used as a grocery store, which report in that respect they aver to be true; that thereupon, upon consideration of the same by them on the 31st of October, 1887, because of the premises, they disapprove said application and refuse to issue said license; and that they are advised that the giving or withholding such license as aforesaid rests in their sound discretion, and that their exercise of such discretion and judgment accordingly is not subject to review by this Court.

The first question presented is whether this return made by the Commissioners is to be construed as conclusive of the question; that is whether it shows that they have done the precise thing that the relator asks in his petition they shall do—duly considered the application and determine it upon its merits, in their discretion. They say that on the 31st of October, upon consideration of the application and because of the premises they refused to grant a license. It is claimed on the one hand that this language means they considered the application; that they did exercise their discretion and judgment and determine not to issue this license and

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that this is the end of the matter. On the other hand it is claimed that it is clearly shown from the return taken in connection with the record in the case, that they simply determined not to consider the case upon ascertaining that the applicant was the keeper of a grocery store, in accordance with a general rule that they had previously adopted not to license any grocery or provision store.

The contention is that the Commissioners had to consider the application in order to reject or refuse it, and that the consideration of the applicant's qualifications necessarily involved the inquiry as to whether he had obtained the consent of a majority of the citizens in the vicinity, as well as the question of his keeping a grocery store, that all of these matters were thus in fact considered and must have been considered in order to discover that the applicant's case came within the regulations above mentioned.

But looking at the entire return it appears that they recite their action in the adoption of this rule in October, 1887, and that after the application was filed they sent out their officer who reported to them that the applicant was the keeper of a grocery, and that thereupon the application was considered and rejected. This, we think, means that the application was rejected because of the fact that the applicant was a grocery keeper and came under the rule which they had adopted in October, 1887, and with this view we have examined the real question in the case.

The question is, may the Commissioners by rule determine that no license shall be granted to keepers of grocery and provision stores.

It is claimed by counsel for the petitioner that this is legislation, and that the Commissioners are not invested with any such power; that they must exercise their discretion with reference to each application as it is presented, and determine it on its merits; that they cannot by a rule exclude a class of persons from making applications and having them duly considered upon their merits.

Some authorities have been presented to us in supposed support of this view, and the authority which probably furnishes us as much light as any upon the particular question is a decision in one of the Pennsylvania reports. Schlandecker *vs.* Marshall, 72 Pa., 200. The Court there held that it was not within the power of the proper court in Pennsylvania to resolve that no license should be granted; neither was it proper for them to say that all licenses should be granted whenever applied for or by whomsoever applied for; but that the real duty of the Court was to examine each application as it was made, and determine whether, under the circumstances, a license should be issued or refused in each particular case.

There was no question in that case whether the Court might not determine in advance that a particular state of circumstances arising in any case would prevent a license from being issued, or that where it was shown that particular traits of character were present in the applicant they would not issue a license to such a person; nor was it decided in that case that the Court might not predetermine that they would not issue a license for retailing in particular places or localities, or to a particular class of persons engaged in a particular kind of business.

In Michigan the business of selling liquor is unlawful. But the Legislature very ingeniously enacted a statute by which persons who engaged in the sale of intoxicating liquors should be taxed a certain amount of money, and providing certain penalties if those taxes were not paid. It is under such a statute that the case was decided to which our attention has been called. We think it does not reflect any light upon the case here, nor is any satisfactory light to be obtained from the other cases cited.

Were the Commissioners invested with the power to determine in advance by rule that they will not issue licenses in certain instances? For example, may they say, "We will not issue any license to retail liquors in any domicile." May they say by rule, "We will not issue a license for selling intoxicating liquors within a certain number of feet of a schoolhouse or church?" May they limit the number of licenses that they will issue in the aggregate, say, to one thousand or five hundred in the entire city, and then distribute those over the city so that there may be a fair proportion of liquor sellers in each of the districts of the same?

We are of the opinion that they may do all or any of these things. If they are invested with such discretion may they not by rule made *in advance* say that in given instances they will not issue a license, if it is apparent that there is some good reason for making such rule? If it is an arbitrary rule, made without any cause or reason for it, and is simply oppressive, it would be beyond the power of the Commissioners, and this Court might so determine. But if it is really made with some apparently good reason this Court will not consider whether under the circumstances if we were called upon to make the rule we would consider its adoption wise or unwise, but must stop with simply finding that it was a fair exercise of discretion in a matter in which the Commissioners are empowered to exercise their discretion, and that having exercised it the controversy is at an end.

Now, they have said that no license to sell liquor by retail shall be granted a grocery or provision store. We think there there is some reason for such a rule. We think that in well known facts such a reason can be found. We all know as a matter of fact that families are intimately connected with these places of business; that the wife, the mother, the children and servants of the family go to these places for the purpose of purchasing the articles necessary for the family and would be brought into the presence of this traffic if it is thus permitted. And we all understand that all places where liquors are sold by retail usually become known to those persons who desire to drink them, and persons who resort to places where liquors are sold are not always in a sober condition when they go there, and that even under circumstances where the keeper of such a place exercises all the diligence and authority he is capable of exercising, there will still be instances of disorder; and if the sale of liquor is permitted in places to which servants, children and women all resort for the legitimate purpose of purchasing supplies for the family, they will be brought

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more or less in contact with the traffic, and with more or less of its incidents.

How potent such a reason as this ought to be is not for us to say. Whether it ought to be sufficient to preclude the issuing of a license by the Commissioners is not for us to say. No appeal lies from their decision to this Court upon any proposition of that kind. But so far as power is concerned the Commissioners may, in precisely the same way that they might say in reference to bawdy and gambling houses, determine that they will not issue a license to any place where groceries and provisions are sold to retail spirituous liquors.

This does not imply that the person engaged in the business of conducting a grocery or provision store may not be a very respectable man and a good citizen. It is found simply that the effect of bringing the business of keeping a grocery and provision store into conjunction with the retailing of spirituous liquors is bad in its tendency. While all persons in the District have the same right to retail spirituous liquors and to receive a license from the Commissioners, in the abstract, it is not a question that the Commissioners are invested with the power to refuse any person who may make application for a license for any good reason, and we think that those reasons may be special and may relate to the particular person—something confined to him alone, his own personal qualities. They may relate to the place in which he proposes to sell; they may relate to the kind of business that he is proposing to carry on in conjunction with the retailing of liquors; and there may be a case, in fairness, equity and justice, where the rule should be general and extend to all persons who may engage in a business and who may desire in connection therewith to retail spirituous liquors.

We are not to say that the Commissioners may not by a rule of this description predetermine that as to a particular class of persons engaged in a particular business, they will not issue a license, the only requirement being that it should be a reasonable rule, and not arbitrarily adopted.

For these reasons, the application for a writ of mandamus is refused.

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY
vs.
THE DISTRICT OF COLUMBIA ET AL.

IN EQUITY. No. 9,189.

Decided October 22, 1888.

The CHIEF JUSTICE, and JUSTICES COX and MERRICK sitting.

The Court has no jurisdiction to restrain by injunction the prosecution of a criminal information to recover a penalty.

APPEAL from a decree dismissing a bill in equity, filed to obtain an injunction against the prosecution of a criminal information to recover a penalty.

THE FACTS are stated in the opinion.

MR. ENOCH TOTTEN, for plaintiff.

MR. A. G. RIDDLE, for defendant.

MR. CHIEF JUSTICE BINGHAM delivered the opinion of the Court:

This is a bill in equity in which the complainant shows that it is an incorporated company for the purpose of constructing, maintaining and operating a street railway in the District of Columbia; that this railway has been constructed and is being operated by the complainant. It shows that at the time of the granting of the charter there were certain provisions in the charter itself as to taxation of the property of the company, and avers that in 1871 the Legislative Assembly of the District of Columbia passed an act by which this company and all others in the District were to obtain a license, and were to pay for each car six dollars.

By the fourth section of this act the Legislative Assembly provided for a fine or penalty of not more than fifty dollars upon each car for every railroad company failing to pay said license fee.

It is averred that in 1887 the Commissioners of the District presented to the Police Court an information, alleging a violation of the provisions of this act on the part of the plaintiff. On trial the plaintiff was found guilty. That an appeal was taken to the Criminal Court and was there dismissed, for the reason, as is averred in the bill, that the Court found the Legislative Assembly was without the power to enact such a law. That afterwards, in April, 1882, another information with like charges and allegations was filed in the Police Court; that there the plaintiff was found guilty and an appeal taken to the Criminal Court, and in that Court the attorney for the District dismissed or withdrew the prosecution.

It is then alleged that in 1884, a short time previous to the filing of the bill in this case, the municipal authorities caused two informations to be presented to the Police Court, each containing charges or allegations like those in the informations theretofore prosecuted; and because of the filing of such informations this bill is filed, in which the complainant avers—

1. That this act of the Assembly of the District is in excess of the power granted to it by Congress, and is, therefore, of no effect.

2. They aver also that the provision for collecting the license fees, which provision, before recited, has been repealed by subsequent acts of Congress in which they have undertaken specifically to provide for the manner of taxing street railway companies in this District.

It is complained that this is double taxation; that they are taxed, first, upon the capital stock, which represents all of their property, including these very cars on which it is sought to collect a license fee, and that the collection of such a fee is double taxation, and, therefore, not to be sustained.

Finally the complainant says:

"That if the said defendants are not sustained and enjoined by the order of this Court from annoying and harrassing its officers and agents, it will be irreparably injured in its business and welfare, and that it is without remedy at law adequate or complete."

"That, according to the rules of practice established for the Police Court, causes therein instituted can go no farther than the Criminal Court; the judgment of which last mentioned Court being in such causes final and conclusive,

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and that, inasmuch as the questions involved in the said causes now pending in the Police Court were fully argued by counsel and considered by said Criminal Court, and decided adversely to the municipal authorities, the complainant ought to be protected from multiplicity of suits and harrassing and annoying writs."

And the complainant then prays that the defendant may be restrained, &c.

To this bill a general demurrer was interposed by the defendant.

Whatever might have been the questions presented to the Special Term, it would appear from the opinion of the justice who heard the cause that no question was made about the right of the plaintiff to file this bill in the Special Term. The case was there decided upon the grounds alleged in the bill for relief.

But upon the hearing of the case in this Court the question was suggested—not urged, however, by counsel on either side, but it is one which the Court cannot overlook—whether this Court has jurisdiction to entertain a bill in equity to restrain the prosecution of a criminal information to recover a penalty.

Authorities were cited by counsel for complainant on the invitation of the Court, but they all relate to the restraining of parties from bringing a civil action, no case has been produced where a court of equity has restrained a criminal prosecution or a proceeding in the nature of a criminal prosecution, and we do not think that has ever been done by a court of equity. There is, we think, an apparent reason for it. Courts of equity interpose to prevent multiplicity of suits and vexatious litigation by private parties, who are shown to be actuated either by desire of gain or to gratify their malice. But proscutions in the nature of criminal prosecutions are conducted by officers of the State representing the public and looking to public interests, as well as the just punishment of the guilty, and it would not be proper for a court of equity to undertake to restrain an officer acting in his official capacity and under the responsibilities of his office, from discharging what to him may appear to be a plain duty pertaining to his office.

For this reason we think the demurrer should be sustained.

We may add that we have serious doubt whether the grounds urged for maintaining this bill are such that they could not be urged in defense of these prosecutions. So far the defendant has been successful in a court of last resort, and there has been only one real instance where it has been determined by litigation. We think if we had jurisdiction the plaintiff could not be said to be in a condition to complain that he has suffered for a long time or to any very great extent. There were only two suits. One was determined by the action of the Court, and the other by withdrawal by the officer representing the prosecution. Inasmuch as the defense sought to be interposed here as a reason for the action of a court of equity could well be made in those prosecutions, and ought to be determined by the Court in which they are pending, we think the complainant is not in this Court under such circumstances as authorizes the Court to entertain the bill.

The decree of the Court in Special Term sustaining the demurrer and dismissing the bill is affirmed.

GEORGE N. BEALE AND WIFE
vs.
GEORGE W. BBOWN ET AL.

At law. No. 25,228.

Decided November 5, 1888.

The CHIEF JUSTICE and JUSTICES JAMES and MERRICK sitting.

1. The act of Congress prohibiting a husband and wife from testifying for or against each other has no application where the wife is the substantial and material party to the action, the husband being only joined as a formal party; in such a case the wife is competent to testify in her own behalf.
2. Where in ejectment both plaintiff and defendant claim title from a common source the plaintiff is not required to trace his title from the State.
3. The recitals of the bill in a suit in equity brought by the defendant and subsequently dismissed are sufficient *prima facie* evidence for the plaintiff in ejectment to repel the presumption of title in the State, when such recitals set out a common source of title between the plaintiff and defendant.
4. The defendant may, however, rebut such evidence by showing affirmatively that the title still remains in the State.
5. The provisions of the act of Congress of 1819 requiring an official report of the tax sale to be placed on record in the office of the Recorder of Deeds, must first be shown to have been complied with before a tax deed can be received in evidence in ejectment; *affirming* King *vs.* District of Columbia, Mac A. & Mackey, 36.

MOTION for a new trial on exceptions taken in an action of ejectment.

THE FACTS are sufficiently stated in the opinion.

MR. HENRY WISE GARNETT, for plaintiff.

MESSRS. W. D. DAVIDGE and EDWARDS & BARNARD, for defendants.

MR. JUSTICE MERRICK delivered the opinion of the Court:

This was an action of ejectment brought by Beale and wife, against Brown and others. In the progress of the case the suit was dismissed against all the other defendants except George W. Brown. In this state of the case it is quite immaterial to consider whether any of the errors alleged in the bill of exceptions, so far as the other defendants were affected, were errors or not, inasmuch as they being out of the case the sufficiency or insufficiency of the evidence as to them no longer plays any part in the judgment of the Court.

The plaintiffs claim title to a certain undivided one-half of certain lots of ground in Square 275 in the City of Washington.

The plaintiff, Elizabeth B. Beale, to sustain her claim, gave in evidence sundry deeds, bringing the title down to Thomas Brown, an uncle, under whom the defendant and the plaintiff both claim title. Having offered that deed in evidence, the plaintiff also offered in evidence a bill in equity filed by the defendant against the plaintiff for the purpose of the apportionment

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of arrears of taxes, as between the two, which he had paid on account of the common estate, which bill had been dismissed. The plaintiff also offered in evidence her own testimony as to certain material facts in the cause. Thereupon the defendant objected, first, that it was not competent to offer in evidence his bill in equity containing certain declarations, because the bill had been dismissed; and he objected, further, that the plaintiff's testimony could not be taken because the husband was also a party with the wife to the proceedings. It appears, however, on the face of the whole record, that the wife was the beneficial party, and the cause of action was in her in respect to a common inheritance as between her and the defendant.

The Court thinks that the restriction in the statute that husband and wife respectively shall not be witnesses for or against each other has no application to a case of this sort, because the wife was not testifying for and on behalf of her husband, but was testifying on behalf of herself in respect of a question of fact, material to the title between her and the defendant, and the relation of husband and wife had no bearing at all upon her character as witness.

She was the substantial and material party, the husband being only a formal party to the action. The fact that the husband has to be joined as a formal party with his wife in certain cases in order to vindicate her right, does not, as the Court thinks, deprive her of the privilege of testifying as against her adversary as to facts controverted between herself and her adversary. It does not involve at all any question arising out of that policy of the law which closes the mouth of husband and wife in respect to the affairs of one another, on account of the prejudice they might be presumed to have for each other nor on account of the tendency to violate the sacredness of the domestic relation and the secrecy which appertains to that relation. For these reasons we believe that the Court below decided properly in taking the testimony of the wife.

The Court is also of opinion that the plaintiff, having rested upon a paper title showing title in a party from whom they claim as a common source of title, and showing by the averments of the bill in equity that the defendant had in that bill admitted that there was a common title, although the bill was subsequently dismissed, gratified sufficiently the requirements of law, which otherwise would have been imperative, that the plaintiff in ejectment must show title out of the United States. The reason why title is to be deduced from the United States is a reason arising out of the ancient situation of things in this country, which practically is no longer applicable, though we are still obliged, in the absence of any legislative repeal, to keep up the ceremonials of proving title from the State. The reason was this, as those who are acquainted with our early history know, that all the titles were originally in the State, and that the action of ejectment was moulded in the State of Maryland at a time when the greater part of the lands were still owned by the sovereign, so that the natural presumption was that title had gone out of the State; and as the plaintiff was required to make out good title as against all the world to maintain his action of ejectment, he had to repel the natural presumption arising from the condition of things, that the title still remained in the State. But the reason of that law has ceased, for we know by universal experience that there is scarcely any title now remaining in the State to any lands within its territorial circumscription; but we are obliged to conform to the rule of law, and we do conform to it sufficiently when we repel that presumption.

The ordinary rule is that where parties claim under a common title, and it is manifest that they do claim under a common title, so far as the two parties are concerned, the presumtion is repelled. In this particular case it was shown by the confession of the defendant, in the bill in chancery to which I have referred, that he set up a common title between himself and the plaintiff. True, he repudiated it afterwards, but the admission was sufficient *prima facie* evidence in favor of the plaintiff to show a common title, and show, as against him, certainly, that the presumption of title in the State was repelled, and therefore it gratified the requirements of the law. He might in defense have shown affirmatively that the title was still in the State, but in the absence of such affirmative proof on his part the proof was sufficient to repel the *prima facie* presumption and make out a case entitling the plaintiff to a verdict.

Objections to the rulings of the Court were also made by divers bills of exceptions, which need not be particularized, but which had relation to certain offers of proof to sustain a tax deed. The defendant set up a certain tax title originating many years ago, in one Obadiah B. Brown, the grandfather of both parties, and the objection was made on the part of the plaintiff that the tax deed could not be offered in evidence until the requirement of the statute of 1819 was first gratified, which imposes the duty upon the city authorities to make a report of all tax sales and have that report placed on record in the office of the Recorder of Deeds of the District of Columbia. It has been decided heretofore by this Court (King *vs.* District of Columbia, Mac. A. and Mackey, 36) that this requirement is an essential ingredient to any tax title, and unless it has been complied with, any tax deed taken by a party is void, because the District of Columbia has not done that which justified it in proceeding to give a tax deed to the party. The Court below rejected the tax title and all the other proof tending to show the perfection of the tax title upon the ground that that one essential requirement has not been conformed to. We think that the Court was entirely right, and therefore that the exceptions taken in regard to the rejection of the tax deed, and in regard to the rejection of all the other collateral facts tending to prove the validity of the tax deed, were properly overruled.

Upon the whole case, the Court thinks that there was no error, and the rulings of the Court below are affirmed..

WHEN an executor offers sufficient bond the Court should permit him to qualify, unless he is mentally or legally disqualified. Holbrook *vs.* Head, Ky. Ct. App., Jan. 28, 1888; 6 S. W. Rep., 592.

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Book Notice.

THE COMPLETE DIGEST. A digest of all the reported American cases and selected English cases, with synopses of statutes of general interest, reference to articles and essays in current law periodicals, and to text-books and other matters of value to the profession, contained in the various law publications from January to July, 1887. New York. Digest Publishing Company, Publishers.

The above volume, of more than 3,200 pages, is the initial number of a newly planned work, which has ambitiously taken for its object the prodigious task of digesting and collating all current law and matters of interest or of value to lawyers; or, as its preface says, the purpose of the work is "to furnish to the American lawyer ready information of all current matters of value to him."

The plan includes a proper presentation of all current decisions of the Courts of the United States and of the different States; of all decisions of English courts deemed applicable to American law; of all statutes and other enactments of general interest; of all important decisions of legal principles or questions or collections of authorities, in judicial opinions, annotations of cases, essays, reviews, editorials or other articles in periodicals, addresses, etc., and motion and reference to announcements and reviews of legal treatises and other works, and changes and proposed changes in the law.

The work also includes a table of cases criticised, disapproved, overruled or reversed, and cases affirmed or followed without reconsideration, and also a table of cases presented in the volume.

We have no hesitation in commending this work and the volume before us; and the high character of the editors Messrs. E. A. Jacobs, J. A. Mullory and F. B. Walroth warrant the belief that subsequent volumes will be better, if possible, than the one first issued.

THE following notice is copied from a late issue of the *Wichita* (Kansas) *Eagle:*

"The compilation of the ordinances of the city of Wichita by Moore & Douglass has been completed and the work issued from the press yesterday. The work receives much praise from the lawyers who have examined it. All superfluous and conflicting enactments have been eliminated and repealed, others condensed and classified with marginal annotations. The book is bound in calf on heavy paper, with clear, clean print, by the *Eagle* printing house, and makes a volume of 437 pages, including the indices."

Most of the subscribers of this journal are acquainted with George L. Douglass, a former resident and practitioner of this city, who is the Douglass of the notice. It has been no surprise to those who know Mr. Dougiass to learn, from time to time, that he has risen rapidly in his profession, has been elected a member of the Kansas legislature, and has become a compiler and author, but they will hardly be prepared for the *Eagle's* information that the council of Wichita has delegated to him and his partner the power to eliminate and *repeal* all superfluous and conflicting enactments. We congratulate Mr. Douglass as an author, a legislator and as a city council all in one.

THE COURTS.

SUPREME COURT OF THE UNITED STATES.

December 10.

1129. Walston et al. *vs.* Nevin et al. Judgment affirmed with costs.

1160. Roach et al. *vs.* Nevin et al. Jugment affirmed with costs.

111. The Louisville, Cin. and Lex. R. R. Co. *vs.* The Switzerland Mar. Ins. Co. Judgment affirmed with costs by a divided count.

77. Menendez *vs.* Holt et al. Decree affirmed with costs.

76. Ryder *vs.* Holt et al. Decree reversed with costs and cause remanded.

137. Brown *vs.* The District of Columbia. On motion of Mr. A. S. Worthington for appellant, ordered to be passed if reached on or before the 20th instant.

301. Clarke *vs.* Reyburn et al. Dismissed as per stipulation.

115. Segrist et al. *vs.* Crabtree. Argument concluded.

116. The City National Bank of Fort Worth et al. *vs.* Hunter et al. Submitted.

December 17.

B. P. Waggeman and W. D. Webb, of Atchinson, Kans.; Benj. B. Kingsbury, of Defiance, Ohio; John B. Knox, of Talledega, Ala., and James S. Harlin, of Chicago, Ill., were admitted to practice.

41. Cragin *vs.* Powell et al. Decree reversed with costs and cause remanded.

71. Callaghan et al. *vs.* Myers. Decree reversed and cause remanded.

1081. Kennedy *vs.* Hazelton. Decree affirmed with costs.

109. Shields, etc., *vs.* Hanbury et al. Decree affirmed with costs.

51. Stachelberg et al. *vs.* Ponce. Decree affirmed with costs.

82. The United States *vs.* The Iron Silver Mining Company et al. Decree affirmed.

99. Ware *vs.* Allen et al. Decree affirmed with costs.

102. The County of Jackson, Mo., *vs.* The Ninth National Bank of New York. Judgment affirmed with costs and interest by a divided Court.

SUPREME COURT OF THE D. C.

IN EQUITY.—New Suits.

December 4.

11486. Laura Cooper et al. *vs.* James W. Hodges et al. For account and sale. Com. sol., Same.

December 5.

11487. Albert J. Richards, by next friend, *vs.* Lulu C. Richards. To annul marriage. Com. sol., A. K. Browne.

11488. Malcolm B. Gordon et al. *vs.* James W. Gordon et al. Sale for partition. Com. sols., Woodward & Woodward.

11489. Ainsworth R. Spofford *vs.* George W. Evans et al. To correct title. Com. sols., Edwards & Barnard.

December 6.

11490. John Hockmeyer *vs.* Mareen D. Hume et al. To substitute trustee. Com. sol., C. G. Lee.

11491. Marvin Eastwood *vs.* Edmund Brand et al. For discovery, account and sale. Com. sols., Newton & Lavender.

December 7.

11492. Martha E. Miller *vs.* Joseph K. Fagin. Specific performance. Com. sol., Samuel C. Mills.

11493. John P. Flynn, minor, et al. Upon petition of guardian, Kate Flynn. To approve Orphans' Court proceedings. Com. sol, William H. Dennis.

December 8.

11494. William E. Giddings *vs.* Laura Giddings. For divorce. Com. sol., C. Carrington.

11495. Charles R. Tyler *vs.* Virginia Tyler. For divorce. Com. sol., J. Ambler Smith.

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December 11.

11496. The Trustees of St. Joseph's Male Orphan Asylum et al. vs. The Faculty of the Medical Department of Georgetown University. To enjoin nuisance. Com. sol., H. E. Davis.

11497. Ellen R. Goldsborough vs. Hugh A. Goldsborough, executor, et al. For trustee and account. Com. sol., E. Totten.

11498. George de Geofray et al., infants, by next friend, vs. E. Francis Riggs et al. Partition. Com. sol., J. H. Ashton.

11499. Salina E. Brown et al. vs. William A. Kimmel et al. To remove cloud off title. Com. sol., Guion Miller.

December 12.

11500. Mary V. Westbrook vs. John H. Westbrook. For divorce. Com. sol., S. A. Cox.

11501. Curtis W. Holcomb vs. Harry Post Wright et al. To construe will. Com. sol., R. Fendall.

11502. Rachel M. Hewett et al., administrators, vs. John White et al. Injunction and receiver. Com. sol., William A. Cook.

11503. Harry O. Bailey vs. William R. Bailey et al. For an account and proper admininistration of trust. Com. sols., Abert and Williamson.

December 13.

11504. Margaret J. Wilson, alleged lunatic. Upon petition of Commissioners of District of Columbia. To appoint committee, &c. Com. sol., H. E. Davis.

11505. Holy Cross Church, by trustees, vs. Austin Herr et al. Injunction to restrain sale, to remove a cloud off title. Com. sols., Carusi & Miller.

December 13.

11506. John Edwards vs. James Gibbons et al. To declare a lien on lots. Com. sol., R. R. Perry.

11507. Mary D. French vs. Alpheus P. French. For alimony. Com. sol., M. J. Colbert.

December 15.

11508. John J. Cleary vs. Thomas Cleary et al. To sell for partition. Com. sol., J. H. Ralston.

11509. George Taylor vs. Richard W. Tyler et al. Trustees ———. Com. sols., Shellabarger & Wilson.

11510. Margaret Robinson vs. Andrew J. Robinson. For divorce. Com. sol., Walter Cooksey.

CIRCUIT COURT.—New Suits at Law.

December 7.

29166. Granville O. Wilson et al. vs. Charles L. Ulrick et al. Account, $123.62. Piffs attys, Abert & Warner.

29167. Horace T. Whitman, trading as Stephen T. Whitman & Son, vs. Charles Fleischman. Note, $96.32. Piffs attys, Same.

29168. Raphael Tuck & Son vs. Edw. W. Koch. Account, $64.43. Piffs attys, Same.

29169. Berger Bros. vs. William S. Sammons. Account, $178.16. Piffs atty, Same.

29170. Dennis Connell vs. James Fitzgerald. Judgment of Justice O'Neal, $36.90.

29171. John W. Morgan vs. Frank M. Greer. Note, $500. Piffs attys, Carrington and Williamson.

December 8.

29172. Jesse C. Ergood et al. vs. Frank Wright. Account, $148.15. Piffs atty, F. T. Browning.

29173. Andrew H. Stockman vs. The Baltimore and Potomac R. R. Co. Damages, $10,000. Piffs atty, E. A. Newman.

December 10.

29174. Hattie Marshall et al. vs. George G. Cornish. Ejectment. Piffs atty, E. F. Arnold.

29175. Same vs. Charles Hicks. Ejectment. Piffs atty, Same.

29176. Same vs. Alexander T. Augusta. Ejectment. Piffs atty, Same.

29177. John T. Best vs. Frank K. Ward. Account, $1,324.22. Piffs atty, C. Carlisle.

29178. Margaret Terral vs. William Bryan, executor. Account, $820. Piffs atty, M. Duckett.

December 11.

29179. Jacob S. Redman vs. John Dugan. Replevin. Piffs attys, Cole & Cole.

29180. Philip Reymer et al. vs. Charles J. Magill & Co. Account, $103.23. Piffs attys, Garnett and Mackall.

29181. The Central National Bank of Washington, D. C., vs. Frank B. Conger et al. Note, $450. Piffs attys, Edwards & Barnard.

29182. Same vs. William Dickson et al. Note, $200. Piffs attys, Same.

29183. Same vs. Frank P. Morgan et al. Note, $250. Piffs attys, Same.

29184. Same vs. John B. Trainer et al. Note, $280. Piffs attys, Same.

29185. Same vs. John H. Walsh et al. Note, $250. Piffs attys, Same.

29186. Same vs. Joseph M. Wheatley et al. Account, $199.88. Piffs attys, Same.

29187. Same vs. John A. Wheatley et al. Notes, $311.31. Piffs attys, Same.

29188. Thomas J. Fisher & Co. vs. John Walsh. Account rent, $122. Piffs attys, Morris & Hamilton.

29189. John W. Shaw vs. Washington Nailor. Account, $429.17. Piffs attys, Edwards & Barnard.

29190. Same vs. Julius K. Smith. Account, $131.74. Piffs attys, Same.

29191. James Jamison vs. Celesta A. Smith et al. Damages, $50,000. Piffs atty, C. Carlisle.

29192. Charles W. Martin & Co. vs. Burgess & Woollen. Account, $126. Piffs atty, R. Hagner.

December 12.

29193. William P. Harvey & Co. vs. Walker & Davis. Judgment of Justice Mills, $71.99.

29194. The Watsontown Planning Mill Co. vs. George M. Dumler. Notes. $1,125.25. Piffs attys, R. E. L. White.

29195. Same vs. Joseph S. Boss. Note, $400. Piffs atty, Same.

29196. Same vs. Joseph S. Boss. Note, $400. Piffs atty, Same.

29197. The Clark Window Glass Manufacturing Co. vs. George M. Dumler. Note, $159.77. Piffs attys, Abert & Warner.

29198. Maryland Pottery Co. vs. J. A. Rosecrans & Co. Account, $145.58. Piffs atty, Same.

29199. Wright & Colwell vs. Same. Note, $156.66. Piffs atty, J. C. Heald.

29200. Howard Q. Keyworth vs. George J. Davis et al. Note, $350. Piffs atty, M. Dean.

29201. Thomas S. Jube, Jr., vs. Uri Behrend. Account, $111.30. Piffs atty, Same.

29202. Herman A. Seligson vs. William Flammer. Judgment of Justice Harper, $53.42.

29203. Jacob H. Hentz et al. vs. John H. Schlenter. Judgment of Justice Bundy, $79.25.

29204. White, Hentz & Co., use of Herman A. Seligson, vs. John H. Schlenter. Judgment of Justice Bundy, $79.25.

29205. Mary C. Thomas et al. vs. Leonard D. Geneste. Ejectment. Piffs atty, T. A. Lambert.

29206. John Burns vs. Owen E. Duffy et al. Account, $303.34. Piffs attys, Cole & Cole.

29207. William W. Culbertson vs. Daniel W. Voorhees. Note, $212. Piffs attys, Same.

29208. Lavinia S. Hebb et al. vs. Lewis G. Marini. $833.33⅓. Piffs attys, Same.

29209. William G. Burns vs. Charles J. Ortlip. Note, $200.50. Piffs atty, L. C. Williamson.

29210. Guggenheimer, Weil & Co. vs. John C. Lantz. Account, $165.54. Piffs attys, Garnett and Mackall.

29211. The State of Maryland, to use of Alice T. Casey. Damages, $20,000. Piffs atty, W. A. Cook.

29212. Elizabeth Nottingham vs. The Baltimore and Potomac Railroad Co. Damages, $15,000. Piffs atty, Same.

29213. Anna Hendley vs. George W. Harvey et al. Note. $305. Piffs atty, F. T. Browning.

29214. William A. Cook vs. Same. Account, $600. Piffs atty, Same.

December 13.

29215. Andrew Jackson vs. "Friends of Zion." Judgment of Justice Strider, $30.47.

December 14.

29216. William H. Lee vs. Barton Fisher. Notes, $1,239.22. Piffs atty, James H. Smith.

29217. Henry Sheehy et al. vs. Augusta M. Dailey. Judgment of Justice Bundy, $29.38.

29218. Charles H. Kerner vs. A. M. Gibson. Account, $283.11. Piffs atty, A. G. Safford.

December 15.

29219. John Reid vs. Catharine Frawley et al. Judgment of Justice Bundy, $25.

29220. Franklin Wise vs. The Baltimore and Ohio Railroad Co. Damages, $10,000. Piffs atty, C. Brown.

29221. John H. Small vs. Peter Campbell. Note, $1,000. Piffs atty, W. G. Johnson.

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Notice of Election.

THE REGULAR MEETING of the STOCKHOLDERS OF THE LAW REPORTER COMPANY of Washington City, will be held at the office of said Company, No. 508 E STREET, NORTHWEST, in said City, on Monday, January 14, 1889, for the election of Trustees of said Company. Polls will be open from 12 M. until 1 o'clock P. M., of said day.

WM. F. MATTINGLY, President.

FRANKLIN H. MACKEY, Secretary.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 14th, 1888.

In the matter of the Estate of **Martha Louise Markland**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Fanny Beall.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of January, 1889, next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
51 Allen Rutherford, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 14th, 1888.

In the matter of the Estate of **John W. Sheckells**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has been made by James McElfresh.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of January, 1889, next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
51 No. 3286. Ad. D. 14. S. C. Mills, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term in Equity.

Flora C. Swearinger, Complainant, vs. John W. Swearinger, Defendant, } Eq. No. 11257. Docket 28.

On motion of the complainant, by Mr. D. S. Mackall, her solicitor, it is, this 19th day of December, A. D. 1888, ordered that the defendant, **John W. Swearinger**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before said day.

The object of this suit is to obtain a divorce *a mensa et thora* from the defendant on the ground of cruelty and desertion.

By the Court. (Sd.) W. S. COX, J.
True copy. Test: R. J. MEIGS, Clerk, &c.
51 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 15th, 1888.

In the case of Mary M. Bennett, administratrix c. t. a. of **Edward Bennett**, deceased, the administratrix c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 11th day of January, A. D. 1889, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administratrix c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
51 No. 2912. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William H. Tenney**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of December, 1888.

ROBT. B. TENNEY, Ex'r,
Capital Mills, Georgetown, D. C.
51 No. 3309. Ad. D. 14. C. M. & H. S. Matthews, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary Ann Doniphan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of December, 1888.

J. WALTER COOKSEY, Ex'r, Fendall Building, City.
51 No. 3304. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 13th day of December, 1888.

Washington B. Williams vs. Francis L. Norton. } No. 29076. Docket —. At Law.

On motion of the plaintiff, by Messrs. J. J. Wilmarth and M. N. Richardson, his attorneys, it is ordered that the defendant, **Francis L. Norton**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to collect bill of exchange for $552.41 and open account for $9.37, and to subject property attached in this cause to the payment thereof.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
51 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 18th day of December, 1888.

Jonathan C. Calhoun vs. Vercelena Calhoun. } No. 11365. Docket 28.

On motion of the plaintiff, by Mr. Warren C. Stone, his solicitor, it is ordered that the defendant, **Vercelena Calhoun**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is an absolute divorce on the ground of desertion and infidelity. It is further ordered that this order shall be published in the WASHINGTON LAW REPORTER for three successive weeks.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
51 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Edward Lloyd, Richard B. Lloyd. Francis B. Lloyd, Rosina Mackey, Rosalie M. Bradford, Malcolm Cudlip and Joanna Mackey, Plaintiffs, vs. Mercy M. Gray, Cordelia Linn, Arthur Costello, George Angel Costello and Benton Horne, Defendants. } At Law. No. 28981. Docket 33.

On motion of the plaintiffs, by Mr. Franklin H. Mackey their attorney, it is ordered that the defendant, Mercy M. Gray, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day: otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover the possession of the whole of original lot nine (9), in square six hundred and fifty-three (653), in the City of Washington, in the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Alice Dulaney et al. vs. Thomas A. Dulaney et al. } No. 11467. Docket 28.

On motion of the plaintiffs, by Mr. B. F. Leighton, their solicitor, it is ordered that the defendants, Thomas A. Dulaney and Robert H Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of the real estate in complainants' bill described, and to substitute a trustee in place of the said Robert H. Ward, trustee under a certain deed of trust set aside in said bill.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Theresa M. Lynch vs. Daniel J. Lynch. } No. 11443. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, Daniel J. Lynch, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of matrimony with the said defendant on the ground of desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Anna M. Furmage vs. Mary Furmage et al. } No. 10975. Eq. Doc. 27.

Irwin B. Linton, the trustee herein, having reported to the Court that he has sold to Lewis C. Rauterberg sub-lots 36 and 37, in square 479, in the City of Washington, containing 4,565 square feet at 84 cents per square foot, and sub-lot 38, in said square, to Frank E. Waring, for $2,455, the said sales aggregating $6,289.60, but being conditioned upon the furnishing of title-insurance policies to the purchasers out of the proceeds of sale, it is, this 19th day of November, A. D. 1888, ordered that said sales be ratified and confirmed, unless cause to the contrary be shown on or before the 19th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
47 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of December, 1888.

Laura A. Blincoe vs. Joseph Blincoe. } No. 11457. Eq. Docket 28.

On motion of the plaintiff, by Mills Dean, Esq., her solicitor, it is ordered that the defendant, Joseph Blincoe, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bonds of matrimony between the plaintiff, Laura A. Blincoe, and the defendant, Joseph Blincoe, on the ground of desertion.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of December, 1888.

William L. Bramhall et al., Trustees, Complainants, vs. Rebecca Britton et al. Defendants. } No. 11444. Eq. Docket 28.

On motion of the plaintiffs, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendants, Rebecca Britton, Elizabeth M. Hardy, Mary J. Armstrong, Annie M. Smith, Clotildis Millard, Frances Millard, Eleanor A. Millard, Joshua J. Millard, Bessie Millard and Mary J. Burrows, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to quiet title to lot numbered eighteen (18), in square numbered one hundred and forty (140), situate in the City of Washington, in the District of Columbia, in the complainants'.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 7th, 1888.

In the case of Edward Godey, Executor, &c., of John W. Godey, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 28th day of December, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
50 No. 2860. Ad. D. 13. F. W. Jones, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis Kurtz, Sr., vs. Louise Kurtz et al. } Equity. No. 11284. Doc. 28.

Robert H. T. Leipold, the trustee herein, having reported the sale of the following described real estate, to wit: lots numbered twenty-four (24) and twenty-five (25), in square No. 480, which said sale and property is more fully described in proceedings and the trustee's report, and that the said property was sold to Charles H. Krey, at and for the sum of $4,900.00 cash.

It is, this 12th day of December, 1888, ordered and decreed, on motion of the solicitor for the complainant, that said sale be confirmed, unless cause to the contrary be shown on or before the 15th day of January, 1889.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
50 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business Letters Testamentary on the personal estate of **Charles D. Pennebaker**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 22d day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 22d day of October, 1888.

ANNA E. PENNEBAKER, Ex'x, 1341 Corcoran st.

49 No. 3179. Ad. D. 14. R. S. Davis, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Flodoardo W. Howard**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 26th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 26th day of November, 1888.

EDW. W. DONN, Adm'r, 935 F st. n. w.

49 No. 3274. Ad. D. 14.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **America Willey**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of November, 1888.

GEO. R. WILLEY, Ex'r, 225 B st. n. w.

49 No. 3285. Ad. D. 14. Irving Williamson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Anna M. Edds**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 30th day of November, 1888.

SETH SCHELL,
C. W. SCHELL,
Executors,
1341 29th st. n. w.

49 No. 3293. Ad. D. 14. Jesse H. Wilson, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **John S. Slater**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 28th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 28th day of November, 1888.

ANNA M. SLATER, Adm'x, 911 6th st. n. w.

49 No. 3294. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 24th day of November, 1888.

Hattie V. Turner *vs.* **George Turner.** } No. 11369. Eq. Docket 28.

On motion of the plaintiff, by Mr. J. Guilford White, her solicitor, it is ordered that the defendant, **George Turner**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce on the grounds of habitual drunkenness, desertion and non-support.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS Clerk, &c.
48 By M. A. CLANCY, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 30th, 1888.

In the matter of the Estate of **Joseph W. Sands**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Henry L. Biscoe.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next, at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
49 No. 3291. Ad. D. 14. S. T. Thomas, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

November 30th, 1888.

In the matter of the Estate of **William H. Thompson**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased has this day been made by Louis D. Wine.

All persons interested are hereby notified to appear in this Court on Friday, the 28th day of December next at 1 o'clock p. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the Washington Law Reporter previous to the said day.

By the Court. WM. M. MERRICK, Justice.
Test: DORSEY CLAGETT, Register of Wills.
49 Dan'l O'C. Callaghan, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of December, 1888.

William B. Webb et al. *vs.* **Mathilda W. Stanton et al.** } No. 11455. Docket 28.

On motion of the plaintiffs, by Mr. H. Randall Webb, their solicitor, it is ordered that the defendants, **Edwin M. Stanton** and **Sophy C. Stanton**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a new trustee to release lot D, subdivision in square 226, from the effects of a deed of trust, made to Edwin L. Stanton, now deceased.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
49 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Mary E. Thomas and others *vs.* **W. W. Thomas and others.** } Equity No. 10,896. Doc. 27.

Ordered, this 20th day of November, A. D. 1888, that the sale made and reported by William W. Boarman, Esq., trustee, of the real estate described in the said report, filed November 19th instant, be, and the same is, ratified and confirmed, unless cause to the contrary be shown on or before the 20th day of December, A. D. 1888.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day last mentioned.

The report states the amount of sale to be $4,010.00.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk,
47 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John M. Graham**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1888.

ELIZABETH GRAHAM, Ex'x, 704 13th st. n. w.

50 No. 3304. Ad. D. 14. D. E. Cahill, Proctor.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
November 21st, 1888.

In the matter of the Estate of John H. Barker, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased having been made by Julia A. Barker.

All persons interested are hereby notified to appear in this Court on Friday, the 21st day of December next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
48 W. W. Boarman, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Horace S. Johnston, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of December, 1888.

THURSTON B. JOHNSTON,
WALTER A. JOHNSTON,
Executors,
1000 Va. ave. s. w.

50 No. 3278. Ad. D. 14. Claughton & Claughton, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of Ira N. Burritt, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1888.

PAYSON BURRITT, Ex'r, 219 C st. s. e.

50 No. 3300. Ad. D. 14. Geo. F. Appleby, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of Michael Devivey, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October 1888.

her
KATE ⋈ DEVINEY, Adm'x, 1038 5th st. n. e.
mark.

50 No. 3247. Ad. D. 14. Neal T. Murray, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of John Sullivan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1888.

her
MARY ⋈ SULLIVAN, Ex'x, 925 N. J. ave. n. w.
mark.

50 No. 3250. Ad. D. 14.

Legal Blanks.

THE LAW REPORTER CO. begs to announce to the profession that the following of its series of legal forms are now complete and can be obtained at the office of the Company, 503 E Street:

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7	Chattel Deed of Trust	5	50	3.50
10	Receipt,	1	6	40
11	Rent Receipt,	1	6	40
12	Promissory Note,	1	6	40
13	Deed of Trust Note,	1	6	40
14	Declaration: Common Counts,	3	25	1.75
15	" General,	5	50	3.50
16	Stock Transfer,	2	10	75
17	Acknowledgment: With Wife, *Clerk's Certificate*,	3	25	1.75
18	Acknowledgment: Single, *Clerk's Certificate*,	3	25	1.75
19	Acknowledgment: With Wife,	3	25	1.75
20	" Single,	3	25	1.75
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23	Release: Short Form,	3	25	1.75
24	Undertaking for App. to G. T.	2	10	75

These Forms are examined and passed on by a committee of leading members of the Bar, are handsomely printed on Crane Bros. Linen Paper, with red marginal lines, are of uniform legal sizes, and on the whole constitute the finest set of legal forms ever issued in the District. Many other forms are in course of production, it being the intention of the Company to publish a complete set of law blanks.

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Attorneys at Law.

WASHINGTON, D. C.

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BELL, W. PEIRCE, *Counsel in Patent Causes* 625 F St. n. w.

BLAIR, JOHN S., 1420 F St. n. w.

DUMONT, N., 629 F St. n. w.

EDWARDS & BARNARD, 500 5th St. n. w.

MACKEY, FRANKLIN H., 505 D St. n. w.

SAVILLE, JAMES H., 1419 F St. n. w.

CALIFORNIA.

McCALLISTER, WARD, JR., 430 Montgomery St., San Francisco.

COLORADO.

DUNN, GEORGE, Denver.

GEORGIA.

HARBEON & GILBERT. Gate City Bank Building, Atlanta.

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WASHINGTON, D. C., - - DECEMBER 28, 1888

The Death Penalty.

The approaching operation of the more humane method of executing criminals marks an epoch in our criminal jurisprudence.

The fact that judicial torture, though not a common law power of the courts, was used in England by command of Mary, Elizabeth, James I. and Charles I., is familiar to all. It was sanctioned by Lord Coke and Lord Bacon, and Coke himself conducted examinations by it.

It was first made illegal in Scotland in 1708; in France in 1789; in Russia in 1801; in Bavaria and Wurtemberg in 1806; in Baden in 1831.

For our present purpose the significance of the prevalence of torture is in the fact that the popular feeling about it was represented by the names given to the instruments of torture. The rack was called in England the Duke of Exeter's daughter, because it was said to have been introduced by one of that line of noblemen. In the embraces of this maiden the frame of the victim was stretched till the joints, and sometimes even the entrails, gave way. They threatened Campian that they would make him a foot longer. One authority stated that his stature was actually increased a hand's breadth.

Another instrument of torture, invented by a lieutenant of the Tower named Skevington, was humorously called the Scavenger's daughter, in honor of its inventor.

The grim humor of the pet name popularly given to this horrible engine, personified as a sweetheart which doubled together the frame of the victim and crushed him in her embrace till the blood started from his pores, is a melancholy testimony to the pleasure which the men of the time were capable of receiving from the spectacle of suffering and mutilation.

Let us take a single instance of an execution as showing the pleasure which the infliction of mutilation was capable of giving to the average man in England ever since the Reformation.

As late as the reign of Elizabeth, that is, about three hundred years ago, the sentence of death in England was to be hung, drawn and quartered. Campian, the Jesuit, was tortured before trial until his limbs were dislocated on the rack, and was carried helpless into Westminster Hall for trial before the Chief Justice of England, unable to raise an arm in order to plead not guilty. Froude, v. xi, 382.

He was sentenced to be hung, drawn and quartered, which meant legally, that upon being hung he was to be cut down while yet living, and dragged at the tail of a horse, and then before death should release him, to be hewn in pieces, which were to be sent dispersed to the places where the offense was committed or known, to be exhibited in attestation of the punishment, the head being displayed in the most important place, as the chief object of interest. In the process of hanging, drawing and quartering, Froude says that due precautions were taken to prolong the agony.

Fitz James Stephen, in his History of Criminal Law, estimates that at the end of the sixteenth century there were about 800 executions per year in England. (Vol. 1, 468.) Another sentence in vogue in England before that time was to be hanged, to have the bowels burned, and to be quartered. Beccaria describes the scene where, "amid clouds of whirling smoke, the groans of human victims, the crackling of their bones, and the frying of their still panting bowels were a pleasing spectacle and agreeable harmony to the fanatic multitude. (Chapter xxxix.)

Campian's case, already mentioned, is specially interesting as showing the intervention of a more humane spirit to mitigate the barbarity of the law. As they were about to cut him down alive from the gibbet, the voice of some one in authority cried out: "Hold till the man is dead." This innovation was the precursor of the change in the law so as to require the sentence to be that he be hanged by the neck *until he be dead.* It is not generally known that the words "until he be dead" are words of mercy inserted to protect the victim from the torture and mutilation which the public had gathered to enjoy.

The extent to which public executions had become scenes of pleasure is familiar to all. Notwithstanding the humaner disposition of the times vast crowds gathered to see the later hangings, drawings and quarterings. Nor was the interest confined to the poor or the criminal classes. The spectators at the death and mutilation of Campian were so numerous that the gentlemen mounted on horseback alone exceeded 3,000.

Burke, in a well-known passage (Sublime, &c., sec. 15), describes the prevailing love for the spectacles of execution as being such as would empty the most attractive theatre and admirable dramatic display that could be made without regard to cost.

It was but little more than 150 years ago that Horace Walpole, referring to the mutilated remains of some of the victims of one of the worst of such outrages, jauntily said that in going to the Tower he had passed under some of the new heads on Temple Bar, where people made a trade of letting spying glasses at a half-penny a look. (Pike, ii, 352.)

The prevalence of this brutality was not particularly characteristic of England. It pervaded the civilized world.

Froude, in speaking of (v. xi, 384), a period only 300 years ago, says "the guilt of judicial cruelty to criminals must be distributed equally over the whole contemporary world."

In the beginning of the sixteenth century, says Gibbon, the manners of Italy exhibited a remarkable scene of the depravity of mankind. They united the sanguinary crimes that prevail in an unsettled state of society with the polished vices which spring from the abuse of art and luxury. * * * Indefatigable in the pursuit of fame and riches, they had improved, by repeated practice, the most exquisite and effectual methods of torturing their prisoners.

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Stephen, in his History of Criminal Law, says: "Down to the end of the last century, in most parts of the continent, breaking on the wheel, burning, in some cases quartering alive, and tearing with red-hot pincers were in use, as well as simpler forms of death." (Stephen's Hist. Cr. L., v. i, 478.)—*Paper by Mr. Abbott before the Society of Medical Jurisprudence.*

SUPREME COURT OF THE UNITED STATES.

HENRY R. DENNY, *Plaintiff in Error,*
vs.
CHARLES C. BENNETT, *as Assignee of* A. B. VAN NORMAN & BRO.

In error to the Supreme Court of the State of Minnesota.

[November 26, 1888.]

A State statute which provides that whenever the property of a debtor is seized by an attachment or execution against him he may make an assignment of all his property and estate not exempt by law, for the equal benefit of all his creditors, who shall file releases of their debts and claims, and his property shall be equitably distributed among such creditors, is valid; and an assignment thereunder is valid against all creditors, whether residents of the State or not, or whether they accept the conditions of the assignment or not, whose contractual rights have arisen since the passage of the law. And such an assignment will not be void because it reserves the surplus of the proceeds after payment of the debts of releasing creditors, to be paid to the assignor, but it *seems* that such surplus may be proceeded against in the hands of the assignee at the instance of any creditor refusing to accept the conditions of the assignment.

MR. JUSTICE MILLER delivered the opinion of the Court:

This is a writ of error to the Supreme Court of the State of Minnesota.

The principal point raised by the assignments of error is that an act of the legislature of that State, approved March 7, 1881, chap. 148, is repugnant to the Constitution of the United States so far as it effects citizens of States other than Minnesota. That statute provides that whenever the property of a debtor is seized by an attachment or execution against him he may make an assignment of all his property and estate not exempt by law, for the equal benefit of all his creditors, who shall file releases of their debts and claims, and his property shall be equitably distributed among such creditors

This is the only assignment of error, with the exception of one other, which will be considered farther on, that, by any fair construction, can be said to come within the jurisdistion of this Court, though others are set out in the brief of counsel, relative to fraud in the assignment made by the debtors in this instance, which raise no Federal question.

The facts may be briefly stated as follows: On the 31st day of December, 1883, J. H. Purdy & Co. brought a suit in the Fourth Judical District Court of Hennepin County, in the State of Minnesota, against Axel B. Van Norman and Gustave Van Norman, partners, under the firm name of Van Norman & Brother, and on the same day procured a writ of attachment to issue in that suit, which was levied upon a part of the goods of the defendants. On the same day that firm made a deed of assignment to Charles C. Bennett, the present defendant in error, reciting the issue and levy of this attachment, and assigning to him "all the lands, tenements, hereditaments and appurtenances, goods, chattels, choses in action, claims, demands, property and effects of every description" belonging to them wherever situated. The instrument also provided that the assignee was "to take possession of the property, and to sell and dispose of the same with all reasonable diligence, and to convert the same into money; and, also, to collect all such debts and demands hereby assigned as may be collectible, and with and out of the proceeds of such sales and collections to pay and discharge all the just and reasonable expenses, costs and charges of executing the assignment," including a reasonable compensation to the assignee for his services.

The assignment then directs the assignee to proceed as follows:

"To pay and discharge in full, if the residue of said proceeds be sufficient for that purpose, all the debts and liabilities now due, or to become due, from said party of the first part to all their creditors who shall file releases of their debts and claims against the said party of the first part, as by law provided, together with all interest due; and to become due thereon; and if the residue of said proceeds shall not be sufficient to pay said debts and liabilities and interest in full, then to apply the same, so far as they will extend, to the payment of the said debts and liabilities and interest proportionably to their respective amounts, and in accordance with the statute in such case made and provided; and if, after payment of all the costs, charges, and expenses attending the execution of said trust, and the payment and discharge in full of all the said lawful debts owing by the said party of the first part, there shall be any suplus of the said proceeds remaining in the hands of the party of the second part, then to repay such surplus to the party of the first part, their executors, administrators or assigns."

It appears that the goods and chattels mentioned in this deed of trust were, under its authority, delivered to Bennett, the assignee, or partly so, the sheriff having closed the doors of the store in which they were situated, at the time that Denny, the plaintiff in error, seized them by virtue of a writ of attachment issued out of the Circuit Court of the United States for the District of Minnesota, of which he was marshal, in a suit brought by Lapp & Flershem against the firm of Van Norman & Brother. The latter action was also commenced on the 31st day of December, 1883. On January 21, 1884, after a refusal by the marshal to deliver the goods, Bennett, the assignee, made application to the United States Circuit Court to be made a party to the suit of Lapp & Flershem against Van Norman & Brother, and prayed for the dissolution of the attachment issued in favor of the plaintiffs therein. The Court, on February 18, 1884, made the following order: "First. That Charles C. Bennett, assignee, do have, and he is hereby given, leave to intervene and become a party defendant herein. Second. That the motion to dissolve the attachment be, and the same is hereby denied." Although the as-

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signee was thus permitted to come in and be made a party, it is not shown that he ever did so, or ever appeared in the case after that time.

There is no further record in this case of any proceedings in the Circuit Court of the United States, nor in the action of Purdy & Co. *vs.* Van Norman & Brother, but the transcript then proceeds with the suit brought by the assignee against the marshal, Henry R, Denny, in the nature of trover and conversion, for damages on account of his unlawful seizure of these same goods while they were in the hands of said assignee, and for a conversion of the same by his refusal to return them to plaintiff. This suit was decided in favor of Bennett, the assignee, in the lower court, by a verdict of a jury, and upon the judgment being carried by a writ of error to the Supreme Court of the State of Minnesota it was there affirmed. In both of these courts the questions we have mentioned were raised by exceptions to the charge of the judge that the assignment was a valid one, and to the ruling that the decision of the Circuit Court of the United States on the motion to dissolve the attachment was not a bar to the present action by the assignee.

The question of the invalidity of this Minnesota statute, as it relates to the rights of creditors, is an interesting one. The argument in favor of that proposition is twofold. First, that it impairs the obligation of contracts; and, second, that such a statute can have no extraterritorial operation, and cannot, therefore, be binding on creditors living in a different State from that of the debtor and of the *situs* of his property.

With regard to the first of these it may be conceded that so far as an attempt might be made to apply this statute to contracts in existence before it was enacted, it would be liable to the objection raised, and therefore in such a case of no effect. But the doctrine has been long settled that statutes limiting the right of the creditor to enforce his claims against the property of the debtor, which are in existence at the time the contracts are made, are not void, but are within the legislative power of the States where the property and the debtor are to be found. The courts of the country abound in decisions of this class, exempting property from execution and attachment, no limit having been fixed to the amount—providing for a valuation at which alone, or generally two-thirds of which, the property can be brought to a forced sale to discharge the debt—granting stays of execution after judgment, and in numerous ways holding that, as to contracts made after the passage of such laws, the legislative enactments regulating the rights of the creditors in the enforcement of their claims are valid. These statutes, exempting the homestead of the debtor, perhaps with many acres of land adjoining it, the books and library of the professional man, the horse and buggy and surgical implements of the physician, or the household furniture, horses, cows, and other articles belonging to the debtor, have all been held to be valid, without reference to the residence of the creditor, as applied to contracts made after their passage.

The principle is well stated in the case of Edwards *vs.* Kearzey, 96 U. S., 595, in the following language:

"The inhibition of the Constitution is wholly prospective. The States may legislate as to contracts thereafter made, as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effect." See also Railroad Co. *vs.* Rock, 4 Wall., 177; University *vs.* People, 99 U. S., 309; Knox *vs.* Exchange Bank, 12 Wall., 379.

The doctrine was very early announced in the case of Wales *vs.* Stetson, 2 Mass., 143; and in the separate opinion of Mr. Justice Story in Trustees of Dartmouth College *vs.* Woodward, 4 Wheat., 518, decided in 1819, it was suggested that in a grant of a charter to a corporation a reservation of the right to repeal it would be valid. This has been acted upon, and such action has been held in many cases to be valid.

The later case of Greenwood *vs.* Freight Co., 105 U. S., 13, contains a review of this whole subject, so far as contracts are concerned.

No reason has been suggested why the legislature could not exempt all interests in landed estate from execution and sale under judgments against the owner, and perhaps all his personal property. However this may be, it is very certain that the established construction of the Constitution of the United States against impairing the obligation of contracts requires that statutes of this class shall be construed to be parts of all contracts made when they are in existence, and therefore cannot be held to impair their obligation.

The act in question in the present case does not exceed many of the class to which we have alluded in its effect in enabling the debtor to dispose of his property without regard to the ordinary judicial proceedings to subject it to forced sale. The power is conceded, when not forbidden by the statute of a State, to a failing debtor to make a general assignment of his property for the benefit of his creditors, as this one does. It is further admitted that in such an assignment, if there be nothing fraudulent otherwise, he can prefer some creditors over others, and that he can secure to some payment in full while he leaves others who will certainly get nothing out of his estate. When this is done, the creditors who are not provided for in the assignment, are left in a worse condition than they are where it is done under the present law, because in the first instance they would certainly get nothing out of the debtor's property, though they would retain a right to proceed against him by a judgment and execution; while in the present case they have the option of pursuing that course, or of coming in with the other creditors, executing releases and obtaining their share of the property assigned. Here, instead of naming the preferred creditors, the assignor gives his property to all who will execute a release of their claims against him. Nobody is required by the statute to do so unless he thinks it is to his interest. The creditor who executes such a release gets his share of the property assigned, while the one who does not receives nothing, unless there may be a surplus left after the payment of the releasors, but he is not hindered or delayed in obtaining a judgment against the debtor, or in levying upon any other property, if such can be found, not conveyed by

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the instrument, or upon any afterwards acquired by the debtor. The latter remains liable, notwithstanding this statute and this assignment, as he always was, for the debt of the non-assenting creditor.

It is not easy, then, to see how this statute can be more complained of as impairing the obligation of contracts than the statutes of exemption which we have already mentioned, and the principles which lie at the foundation of all voluntary assignments for the benefit of creditors with preferences that exhaust the fund assigned.

But it is said in answer to this view of the subject that there is a clause in the instrument now before us directing that if there shall be a surplus after the payment in full of all the creditors who shall release the assignors it shall be paid over to the latter. There are two answers to this. If that clause or provision is unlawful and violates the laws of the State of Minnesota, or the Constitution of the United States, it can be rejected, and the remainder of the assignment permitted to stand. The statute under which the assignment was made does not require that such surplus shall be paid over to the debtors. The Supreme Court of that State has held that such a fund may be arrested when proper proceedings are had before it gets to the debtor's hands, and, certainly, wherever that surplus may be found, and however it may be got at by any of the processes of law, it is liable to be taken by the non-releasing creditor. He can pursue all the remedies which the law gives him as against any fund, property, chose in action, or estate liable to the payment of his demand.

But it is said that this statute of Minnesota is void under the principles laid down by this Court in the cases of Sturges *vs.* Crowninshield, 4 Wheat., 122; Ogden *vs.* Saunders, 12 Wheat., 213; Baldwin *vs.* Hale, 1 Wall., 223, and Gilman *vs.* Lockwood, 4 Wall., 409. The proposition lying at the foundation of all these decisions is, that a statute of a State, being without force in any other State, cannot discharge a debtor from a debt held by a citizen of such other State. One of the best statements of the doctrine is found in the following language used in the latest case on the subject, that of Gilman *vs.* Lockwood, *supra*.

"State legislatures may pass insolvent laws, provided there be no act of Congress establishing a uniform system of bankruptcy conflicting with their provisions, and provided that the law itself be so framed that it does not impair the obligation of contracts. Certificates of discharge, however, granted under such a law, cannot be pleaded in bar of an action brought by a citizen of another State in the Courts of the United States, or of any other State than that where the discharge was obtained, unless it appear that the plaintiff proved his debt against the defendant's estate in insolvency, or in some manner became a party to the proceedings. Insolvent laws of one State cannot discharge the contracts of citizens of other States; because such laws have no extraterritorial operation, and consequently the tribunal sitting under them, unless in cases where a citizen of such other State voluntarily becomes a party te the proceeeding, has no jurisdiction of the cause."

This is conceived to be a clear and accurate presentation of the doctrine of the preceding cases, and it will be seen that the substance of the restrictive principle goes no farther than to prohibit, or to make invalid, the discharge of a debt held by a citizen of another State than that where the court is sitting, who does not appear and take part, or is not otherwise brought within the jurisdiction of the court granting the discharge. In other words, whatever the court before whom such proceedings are had may do with regard to the disposition of the property of the debtor, it has no power to release him from the obligation of a contract which he owes to a resident of another State, who is not personally subjected to the jurisdiction of the court. Any one who will take the trouble to examine all these cases will perceive that the objection to the extraterritorial operation of a State insolvent law is, that it cannot, like the bankrupt law passed by Congress under its constitutional grant of power, release all debtors from the obligation of the debt. The authority to deal with the property of the debtor within the State, so far as it does not impair the obligation of contracts, is conceded, but the power to release him, which is one of the usual elements of all bankrupt laws, does not belong to the legislature where the creditor is not within the control of the Court.

The Minnesota statute makes no provision for any such release. The creditor who became such after the statute was passed cannot complain that the obligation of his contract is impaired, because the law was a part of the contract at the time he made it, nor can he say that his contract is destroyed and the debtor discharged from it, which is of the essence of a bankrupt law, because no such decree can be made by the court, neither does the law have any such effect, though the obligation of the debtor to pay may be cancelled or discharged by the voluntary act of the creditor who makes such release for a consideration which to him seems to be sufficient.

The other assignment of error, pressed by counsel for plaintiff in error, that the proceedings in the Circuit Court of the United States, in relation to the dissolution of the attachment and Bennett's becoming a party to the suit there pending, are an estoppel of the claim not set up by him, is not in our opinion entitled to much consideration. The order of the Court in relation to that matter, above quoted, merely gave leave to the assignee to become a party to that suit, at the same time overruling the other branch of the motion asking for a dissolution of the attachment. It does not appear by the record that Bennett ever did make himself a party to that suit, and of course could be bound by no judgment rendered in regard to it. Even if he can be supposed to be a party, so far as the motion to dissolve the attachment is concerned, we concur with the Supreme Court of the State of Minnesota (Bennett *vs.* Denny, 33 Minn., 530) in holding that "it was merely a decision of a motion or summary application, which is not to be regarded in the light of *res adjudicata*, or as so far conclusive upon the parties as to prevent their drawing the same matters in question again in the more regular form of an action.

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For this they cite the decisions of their own court.

In aid of this view of the subject we may also refer to the opinion of Judge Nelson in deciding the motion to dissolve. After reciting the circumstances under which that motion was made, he said:

"It is by virtue of this seizure that the marshal holds the property. On this statement of the facts I shall not decide on this motion who has the better title and right to the possession of the property taken. * * * The writ of attachment properly issued in this suit against the debtor, and if the marshal has seized the property which belonged to Bennett, he is certainly liable in an action of trespass for the damages thereby sustained." Lapp *vs.* Van Norman, 19 Fed. Rep., 406. See Buck *vs.* Colbath, 3 Wall., 334.

It is, therefore, clear that the order of the judge refusing to dissolve the attachment was not predicated upon any decision as to the right of the possession of the property, but that he intended to leave the marshal liable to the present action, if the facts justified the claim of the assignee. Apart from this we are not at all satisfied that the effect of this action of the Circuit Court on the suit afterwards brought by the assignee in the State court is a question of Federal cognizance. Its decision, as shown by the opinion of Judge Nelson, was not based upon any law or principle of Federal jurisprudence, and must have rested upon the general rules which govern the conclusiveness of former judicial proceedings when called in question in another case.

The judgment of the Supreme Court of Minnesota is affirmed.

TITLE 11, chapter 6, of the Code of Iowa, as amended by chapter 143, sections 1523–1530, 1543, Acts of 1884, which prohibit the manufacture and sale of intoxicating liquors within that State, except for mechanical, medicinal, culinary or sacramental purposes, and provide for the abatement of the unlawful sale or manufacture as a nuisance, are not in conflict with Section 8, Article 1, of the Constitution of the United States, as an attempt to regulate commerce between the States, though they prohibit the manufacture and sale within the State of liquor for exportation, except for mechanical, medicinal, culinary or sacramental purposes. Nor do such statutes deprive the owners of property used for the unlawful manufacture or sale of intoxicating liquors of their property without "due process of law," within the meaning of the Fourteenth Amendment of the Constitution of the United States. Kidd *vs.* Pearson, U. S. Supreme Court, Oct. 22, 1888.

ONE of the most striking facts of the Queen's reign is the extraordinary decrease of crime. When Her Majesty ascended the throne, fifty years ago, there were fifty thousand convicts in durance vile. Now, with a population nearly doubled, they amount to seven thousand only, showing a diminution of ninety-three per cent. *London Law Times.*

Supreme Court of the District of Columbia.

GENERAL TERM.

REPORTED BY FRANKLIN H. MACKEY.

PATRICK CORCORAN
vs.
WASHINGTON NAILOR.

IN EQUITY. No. 10,971.

Decided November 5, 1888.

The CHIEF JUSTICE and JUSTICES JAMES and MERRICK sitting.

1. Under the building regulations existing in this District in 1887, a party wall cannot be erected with windows overlooking the servient land.
2. Where such a wall has been built and the servient owner has not been guilty of laches, equity will issue its mandatory injunction directing the closing up of the openings.
3. And the closing of such opening must not be done by mere patch work, but the filled up spaces must connect with the adjoining wall, so as to render such spaces suitable for support and for all the purposes contemplated by the right of joint use.
4. The fact that the dominant owner stands ready to fill up such opening whenever the servient owner desires to use the wall as a party wall, constitutes no defense, for such a wall not being within the meaning of the law a party wall, its erection creates an immediate and continuous trespass upon the adjoining owner's land for which no adequate relief can be had at law. No laches can be imputed to the adjoining owner where it appears that he protested against the erection of such a wall during its construction.

BILL for an injunction. Certified to the General Term for hearing in the first instance.

THE FACTS are stated in the opinion.

MR. R. ROSS PERRY, for plaintiff:

Adjoining owners own each to the center of a party wall, and are not tenants in common of the said wall. Watts *vs.* Hawkins, 5 Taunton, 20; Washburn on Easements and Servitudes, p. 454.

Therefore it cannot be supposed that the law enables a man's own property to be converted into a weapon of offense against him.

Walls with windows or openings in them are not party walls. Sullivan *vs.* Graffert, 35 Iowa, 531; Ingalls *vs.* Plamandon, 75 Illinois, 118; Brooks *vs.* Curtis, 50 N. Y., 639; Mendall *vs.* Delano, 7 Met., 176; Phillips *vs.* Boardman, 4 Allen, 147; Hart *vs.* Rucker, 5 Serg. & R., 1; Vollmer's Appeals, 61 Penn St., 118; Danenhower *vs.* Divine, 51 Texas, 480; 16 American Law Register, p. 12, note.

Mandatory injunction proper remedy. Phillips *vs.* Boardman, 4 Allen 147; Danenhower *vs.* Divine, 51 Texas, 480; High on Injunctions, secs. 332, 792, 852.

The building regulations did not authorize windows in party walls.

MR. DANIEL O'C. CALLAGHAN, for defendant:

The piercing of the division wall with windows does not make the beginning of the acquisition of a dominant easement of light and air. Parker *vs.* Foote, 19 Wend., 309; Myers *vs.* Gemmel, 10 Barb., 537.

The neighboring owner may with impunity interrupt such light and air by constructing a

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house, and make use of the division wall as a party wall or he may build barriers on his land up against such windows. Washburn on Easements, 4th ed., pp. 650, 659.

If the windows be already in the division wall the neighboring owner has no redress against the prospect his neighbor has. Pierce *vs.* Lemon, 2 Hous., 519; Wash. on Ease., p. 659.

There was no prohibition whatever in the building regulations against such use of a division wall at the time, to wit, September, 1887, when the defendant did what the plaintiff complains about.

MR. JUSTICE JAMES delivered the opinion of the Court:

This is a bill for a mandatory injunction. It appears that the complainant and the defendant are owners and occupants of adjoining parts of original lot 3 in square numbered 630 on the map of Washington City; that complainant had built a residence with a party wall resting wholly on defendant's lot, and extending about forty feet from the front line of said lots; that afterwards, about the month of September, 1887, the defendant, beginning at the rear end of complainant's party wall, built a party wall extending throughout the whole of the remaining length of complainant's lot, and vesting thereon to the extent of four and one-half inches; that the defendant caused to be constructed in said wall twenty-two windows, opening from the several stories of defendant's house upon complainant's yard; that the lower floor of defendant's house is used by him as a depository of carriages appurtenant to the business of a stable, and that the complainant objected and protested against these openings at the time of their construction. He complains that these openings weaken the wall and render it unfit for use as a party wall, and that by reason of their overlooking his private yard they constitute a nuisance. He therefore prays that the Court shall, by its mandatory writ, enjoin the defendant from continuing the said windows in the party wall. The first question to be considered, is whether a person could, under the building regulations existing in September, 1887, lawfully erect a party wall with windows or openings thereon overlooking the servient land.

The building regulations relating to party walls, approved by President Washington in 1971, were then in force, and contained the following provisions:

"That the person or persons appointed by the Commissioners to superintend the buildings may enter on the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof, which foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built, and shall be of the breadth and thickness determined by such person proper; and the first builder shall be reimbursed one moiety of the charge of such party wall, or so much thereof as the next builder shall have occasion to make use of, before such next builder shall any ways use or break into the wall. The charge of value thereof, to be set by the person or persons so appointed by the Commissioners." * * *

"The building owner shall pay for one-half of an existing party wall, or for so much thereof as he shall use, whether said wall be cut or not, and the quality or measurement of wall so used shall be computed by the Inspector of Buildings, unless the parties in interest agree upon some other person or persons for such purpose. The indemnity to the adjoining owner shall be paid by the building owner, previous to cutting or in any manner using said wall at the then current price for similar work. The measuring fee shall be paid as hereinafter described and shall be paid in equal proportions by both parties to the person selected."

This servitude, imposed *in invitum*, is to be construed with the utmost strictness. It renders the occupation of another's land lawful only when the wall with which it is occupied satisfies the reason and purpose for which the easement was imposed. The servient owner is compelled to submit to the burden only on the ground that the thing imposed is, in contemplation of law, a benefit equally to him and to the dominant owner; in other words, that it at once stands ready for his enjoyment for all the purposes for which a party wall is intended to serve. These purposes include several uses. It is intended, in the first place, to serve for the support, at any point, of the beams which the servient owner may reasonably have occasion to insert in a supporting wall. This forbids the construction of openings where beams cannot be inserted and support cannot be afforded. In the next place it is intended to serve the purpose of a complete division between adjoining houses. This forbids the construction of spaces in it which do not divide.

It is no answer to say that the dominant owner stands ready to fill up the openings whenever the servient owner desires to use the wall as a party wall. That very statement admits that it had not been meantime a party wall, and the servitude only renders lawful occupation by an actual party wall. The occupation meantime by what is not a party wall is not the enjoyment of an easement, but is simply a trespass. It hardly seems necessary to support this obvious limitation of the nature of a party wall by reference to decisions based upon similar statutes, but such decisions are numerous. We may refer, for example, to Sullivan *vs.* Graffert, 35 Iowa, 531; Ingals *vs.* Pamondon, 75 Ills., 118; Brooks *vs.* Curtis, 50 N. Y., 639; Danenhower *vs.* Divine, 51 Texas. 480. See, also, 16 Am. L. R., 12, note.

If a wall with windows or openings is not a party wall within the intention of the rule which imposes the servitude of such walls, and is therefore a trespass. We have to consider next that the trespass is accompanied in this case with constant circumstances, which cause discomfort and inconvenience to the injured party in the enjoyment of the rest of his land. Windows overlooking his domestic grounds diminish the proper enjoyment of the premises and impair their value. In short, this trespass is accompanied by nuisance. The injured party is entitled, therefore to a discontinuance of the injury, and he is entitled to relief in equity. An action of ejectment would be an inadequate remedy, for after recovery he would be at the cost and trouble of removing so much of the wall as stood on his land, or of filling up the

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openings. So, too, repeated actions of trespass would be an inadequate remedy. We repeat, therefore, that the complainant is entitled to relief in equity. He has a clear right to require that this illegal structure shall be conformed to the law authorizing party walls, and this can be done only by closing these openings, and by doing so in such manner as shall render the filled up spaces suitable for support and for all the purposes contemplated by the right of joint use. The brick work used in closing the openings should not be a mere patch, but should connect with the adjoining wall in the usual manner of a continuous wall. To this end a mandatory injunction is the proper remedy. See High on Injunctions, secs. 332, 792, 852; Phillips *vs.* Boardman, 4 Allen, 147; Danenhower *vs.* Divine, 51 Texas, 480; Sullivan *vs* Graffert, 35 Iowa, 531.

It should be added that the complainant has not lost his right by any laches, since he protested in good season against the defendant's proceedings.

A decree may be prepared in accordance with this opinion.

Exchanges.

The principle articles in the *Canadian Law Times* for December are Alteration of Judgments, Sentences and Verdicts (concluded); and Commercial Trusts in Rome. The Current Harvard Law Review gives us an excellent essay on the Watuppa Pond Cases by Samuel D. Warren, jr., and Louis D. Brandeis. Also an article on Statutory Changes in Employers' Liability by Marland C. Hobbs.

THE employment of an attorney at law to conduct litigation or to collect a claim, does not, of itself, confer any right to compromise the demands of the client, or to take in settlement anything but what he considers himself entitled to, except in certain cases of a peculiar character or attended by peculiar circumstances from which an authority to compromise may be implied.

The acceptance of $130 in settlement of a disputed claim for $200 would be valid and binding upon the creditor; but such an agreement made by an attorney employed to collect the debt is of no force, without authority from the client. Brockley *vs.* Brockley, Supreme Court of Pennsylvania, October 1, 1888.

UPON clear proof that a contract has been made to do something involving the execution of a written instrument, which is afterwards refused to be made, a court of equity will coerce the execution of the written instrument. The proof, however, must be full, satisfactory and conclusively convincing.

In decreeing the specific performance of a contract to insure, the Court may also decree the payment of the loss shown to have occurred.

A contract of insurance is an executed one in writing, enforceable at law; a contract to insure is executory, may be by parol, and is enforceable in equity. The Phœnix Insurance Co. *vs.* Ryland, Court of Appeals of Maryland, Nov. 23, 1888.

Current Decisions.

In Clark *vs.* Bradstreet, Maine Supreme Judicial Court, July 2, 1888, it was held that in bastardy proceedings it is error to allow an infant six weeks old to be introduced in evidence and viewed by the jury to enable them to judge from a comparison of its appearance, complexion and features with those of the defendant, whether any inference could be legitimately drawn therefrom as to its paternity. The Court said: "In a case like this, where the child was a mere infant, such evidence is too vague, uncertain and fanciful, and if allowed would establish not only an unwise but dangerous and uncertain rule of evidence. While it may be a well known physiological fact that peculiarities of form, feature and personal traits are oftentimes transmitted from parent to child, yet it is equally true, as a matter of common knowledge, that during the first few weeks, or even months, of a child's existence, it has that peculiar immaturity of features which characterizes it as an infant, and that it changes often and very much in looks and appearance during that period. Resemblance then can be readily imagined. This is oftentimes the case. Frequently such resemblances are purely notional or imaginary. What may be considered a resemblance by one may not be perceived by another having equal knowledge of the parties between whom the resemblance is supposed to exist. If there should be a likeness of features there might be a difference in the color of the hair or eyes. As was said by the Court in People *vs.* Carney, 29 Hun., 47: 'Common observation reminds us that in families of children different colors of hair and eyes are common, and that it would be a dangerous doctrine to permit a child's paternity to be questioned or proved by the comparison of the color of its hair or eyes with that of the alleged parent." Mr. Justice Heath, in the case of Day *vs.* Day, at the Huntington Assizes, in 1797, upon the trial of ejectment, where the question was one of *partus suppositio*, admitted that the resemblance is frequently exceedingly fanciful, and therefore cautioned the jury in reference to such evidence. And in a trial in bastardy proceedings the mere fact that a resemblance is claimed would be too likely to lead captive the imagination of the jury, and they would fancy they could see points of resemblance between the child and the putative father. As in the case at bar, where the infant was but a few weeks old, such evidence if allowed in determining the paternity of the child would be exceedingly fanciful, visionary and dangerous. The testimony of witnesses, where they have no special skill or knowledge in such matters, has never been admitted in this State or Massachusetts to prove a resemblance in the features between the child and the alleged father. Keniston *vs.* Rowe, 16 Me., 38; Eddy *vs.* Gray, 4 Allen, 438. Nor points of dissimilarity, not implying a difference of race. Young *vs.* Makepeace, 103 Mass., 54. We are aware that in New Hampshire, Massachusetts and North Carolina, and perhaps some of the other States, on an issue of bastardy, the courts have allowed the jury to judge of likeness by inspection. Gilmanton *vs.* Ham, 38 N. H. 108; Finnigan *vs.* Dugan, 14 Allen, 197; State *vs.* Arnold, 13 Ired., 184;

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State *vs.* Woodruff, 67 N. C., 89. And in deciding with regard to the color of the child, whether of negro blood or not, it has been held proper to exhibit it to the jury. Warlick *vs.* White, 76 N. C., 175; Garvin *vs.* State, 52 Miss., 207. No one will doubt the propriety or reason upon which these decisions are based when the question is one of race or color, for it is well understood that there are marked distinctions, physical and external, between the different races of mankind, which may enable men of ordinary intelligence and observation to judge whether they are of one race or another. In State *vs.* Smith, 54 Iowa, 104, S. C. 37 Am. Rep., 192, the child was two years and one month old, and the Court there held that a child of proper age might be exhibited to the jury, and that it was not error to exhibit a child of that age, with instructions to the jury to disregard the evidence unless they could see the resemblance claimed. In the decisions from New Hampshire and Massachusetts nothing appears to show the age of the child of which the court speak. Our attention has been called to no other decisions in New England, nor have we been able to find any where this question has come before the courts. But from a careful examination of the cases in those States where the question has arisen we are satisfied that the weight of authority is against the admission in evidence of a mere infant where race or color is not involved. Thus in Hanawalt *vs.* State, 64 Wis,, 84, S. C., 54 Am. Rep. 588, a child less than one year old was exhibited to the jury for their inspection. This was held error, and the Court says: 'When applied to the immature child its worthlessness as evidence to establish the fact of parantage is greatly enhanced, and is of too vague, uncertain and fanciful a nature to be submitted to the consideration of a jury.' In State *vs.* Danforth, 48 Iowa, 43, where the child was but three months old, the Court says that the resemblance of infants to the father is too uncertain and indistinct to be allowed as evidence, and that it would be an unwise and dangerous rule to permit the admission of a child of that age. In Bisk *vs.* State, 19 Ind., 152, the Court doubted the right to introduce an infant in evidence, saying that it had seen no authority on the point; that it would be an uncertain rule, and would involve the necessity of giving the alleged father in evidence. The same question was before the Court in Reitz *vs.* State, 33 Ind., 187, where the child was held up before the jury for inspection, but the Court decided it was improper, and told the jury to disregard it. See also People *vs.* Carney, 29 Hun., 47."

It is erroneous for a judge to grant relief by reinstating a case, after dismissal, without notice to the opposite party.

Judges acting in a subject matter of which they have jurisdiction are not liable to the party aggrieved in a suit for damages, even though the acts so done were in excess of their jurisdiction. "Nor can this exemption from civil liability be affected by the motives with which their judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry." Supreme Court of Colorado. Opinion filed Oct. 26, 1888. Hughes *vs.* McCoy.

Lawyers and Their Ways.

Peter the Great was opposed to litigation. He issued an edict that no trial should last to exceed eleven days.

A lawyer making his will bequeathed his estate to fools and madmen, "for," said he, "from such I had it and to such I give it."

Solon compared the people to the sea and the lawyers to the wind. "The seas," he said, "will be calm and quiet if the wind does not trouble."

Hargrave, the English commentator, is credited with having said: "Any lawyer who writes so clearly as to be understood is an enemy to his profession."

In the reign of Henry VI, courts were held at Dorking every three weeks, and there are instances of suits lasting six months, and resulting in damages of four pence and costs of twelve pence.

European civilization may have wrought changes, but up to a few years ago the Chinese code was so simple that the services of attorneys were not necessary, and there was not a lawyer in the whole empire.

Dr. Garth, alluding to the practice of lawyers, wrote:

"For fees, to any form they mold a cause,
The worst has merits and the best has flaws;
Five guineas make a criminal to-day,
And ten to-morrow, wipes the stain away."

In the rolls of the British Parliament, 1445, is a petition from two counties setting forth that the number of attorneys had lately increased from six to twenty-four, whereby the peace of those counties had been greatly interrupted by lawsuits. They asked that the number be reduced to fourteen.

Addison tells a story about the Neapolitans, who were much given to litigation. One of the popes made a requisition upon the viceroy of Naples for 30,000 head of swine. The viceroy replied that the swine could not be spared, but if his holiness had any use for 30,000 lawyers they were much at his service.—*The National Law Review.*

Defendant conveyed the land in controversy to plaintiffs, and by a contemporaneous agreement they stipulated to re-convey to him, on payment of a stated sum, within one year. Two days thereafter they leased the land to him for one year at a stated rental. The agreement to reconvey was signed by plaintiffs only. Defendant did not agree to pay the amount therein named. No loan was referred to. There was no evidence showing the value of the land, nor contradicting the presumption that the lease was executed at the time of its date. *Held*, that the transaction was not shown to have been a mortgage. Montana Supreme Court, Sept. 15. 1888. Gassert *vs.* Bogk.

ACCORDING to the *New Jersey Law Journal* the Courts of that State have held that "a boy is not worth in money to his parents much more than it costs to raise him." In that case the remedy of damages for the loss arising from the death of the boy is so unsatisfactory and inadequate that it practically amounts to a denial of justice.

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Legal Reasoning.

As the controlling effect of precedents declines, the influence of legal reasoning rises. Close argumentation is superseding both eloquence and authority. And it ought to be so. The life of the law is in its reasonableness; and reason can do more to make the law clear than a long line of cases suggesting fine drawn distinctions, and more than any amount of oratorical power.

The two poles of legal reasoning are, the facts of the case, and on the other hand the established and generally received conception of what the law is. The cases where counsel's success depends on changing the view of the law entertained by the Court, are rare. The question now is almost always in the fair and safe application of known law to investigated facts.

The decisions of our Courts, especially of the Appellate Courts, show, with increasing frequency, admirable specimens of judicial reasoning. Probably this would be still more frequently the case were it not that the arguments of the Bar are now so commonly well elaborated and pointed that the Courts, in the press of business, rather state conclusions than take time in setting forth the arguments which have led to that conclusion.

A curious illustration of the greater value placed on the arguments now than ever before is seen in the frequency with which briefs in the Court of Appeals are studied, in the bound volumes preserved in several of our libraries. We wish some of our many brief makers would give the profession a delineation of the qualities and characteristics of forensic argument of the best models to-day.—*N. Y. Daily Register.*

POWERS — APPOINTMENT — INTENTION. — The intention to execute a power of appointment by will must appear by a reference in the will to the power, or to the subject of it, or from the fact that the will would be inoperative without the aid of the power.

SAME—DEVISE OF REAL ESTATE.—A general devise of real estate is a sufficient execution of a power of appointment where it clearly appears that the testator had no property of that description in his own right.

SAME—DIRECTION TO PAY DEBTS.—A clause in a will directing that the testatrix's debts should be paid cannot be taken as an execution of a power to dispose of real estate.

SAME—FACTS IN THIS CASE.—J. B. devised land to E. A. B., his wife, for life, with power in her "to will and dispose of the same in such manner as she may see fit by any instrument in the nature of a last will and testament." In case she died without exercising this power the property was to go to his children, E. B. and S. B. E. A. B. died leaving no real estate, but leaving a will devising "to my two daughters, E. B. and S. B., all my property, real, personal and mixed," &c. This is a valid execution of the power, and E. B. and S. B. take the real estate of J. B. as appointees, and a creditor of E. A. B. has no right to proceed against it. Balls *vs.* Dampman, Maryland Court of Appeals, November 22, 1888.

It is our belief that most infant resemblances are due to the imagination of the observers or the desire to compliment the parents. We once saw a babe which was the living image of the first Napoleon, and if it had been born about sixty years earlier; and had been put in a basket and left at his door over night, nothing would have convinced the jealous Josephine that her husband, instead of mounting barbed steeds to fright the souls of fearful adversaries, had not been capering nimbly in a lady's chamber to the lascivious pleasings of a lute, say in the apartment of Madame de Remusat, or the Duchess d' Abrantes, or some other of the fool women of the Empire who left memoirs apparently to apprise future ages that the great conqueror sustained a repulse by their arms as decided as that of Leipsic or Waterloo. There can be no doubt that "heaven lies about us in our infancy." There would be as much sense in tracing a resemblance between the voice of the child and that of the putative father as between their faces, or rather more, in fact, for the voice of infants is frequently more mature than the face. Such evidence is not good even *prima facie.—Albany Law Journal.*

IN the interesting case of Clark *vs.* Bradstreet, is pronounced a sound doctrine, in our opinion, on the practical test of exhibiting an infant in evidence in bastardy proceedings to show a resemblance to the putative father. As the infant in this instance was only six weeks old the pretense of tracing a trustworthy resemblance to the defendant may safely be pronounced ridiculous. At any age such evidence is extremely unsafe and untrustworthy. The books are full of well authenticated cases of mistaken identity. Almost the first thing which two adult strangers do on being presented to one another is to trace resemblances in each other to others of their acquaintance. Another point in which such evidence must be regarded as unsafe consists in the fact that no two people will agree on an alleged resemblance, even in the same family. The moment a baby appears in a household the monthly nurse declares him to be the living image of his papa or her mamma, as the case may be, while on the other hand the most intimate friends of the family see no resemblance to either parent, but think the new comer "favors" his great uncle, or discover no likeness to anybody in particular but the vacuity and stolidity of countenance general in the infant class.

SIR CHARLES RUSSELL, Ex-Attorney General, and leading counsel for Mr. Parnell, has a well known trick of driving a point home to a jury which is inimitable by any other advocate. He begins to lead up to it with his right hand in his tail pocket, under his gown. Thence he extracts a snuff-box, transfers it to his left hand, opens it, takes a pinch between the finger and thumb of his right, and with the box still in his left hand, and the pinch still in transitu, he makes his point unerringly, so that it reaches his hearers' minds at the precise moment at which the pinch reaches its destination. Then with an inimitable flourish of a red and yellow bandanna, the oratorical effort is complete. But to be properly appreciated it must be seen.

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THE COURTS.

SUPREME COURT OF THE UNITED STATES.

134. The Eastern Railroad Co. *vs.* The United States. Ordered to be passed when reached.

1104. The City of N. O. *vs.* The La. Construction Co. Motion to dismiss or affirm submitted.

The Chief Justice announced that the Court would adjourn from Thursday, the 20th instant, to Wednesday, January 2, 1889.

The Chief Justice announced the following order:

"There having been a Chief Justice of this Court appointed since the adjournment of the last term, it is ordered that the following allotment be made of the Chief Justice and Associate Justices of said Court among the circuits agreeably to the act of Congress in such cash made and provided, and that such allotment be entered of record, viz.: For the First Circuit, Horace Gray, Associate Justice. For the Second Circuit, Samuel Blatchford, Associate Justice. For the Third Circuit, Joseph P. Bradley, Associate Justice. For the Fourth Circuit, Melville W. Fuller, Chief Justice. For the Fifth Circuit, Lucius Q. C. Lamar, Associate Justice. For the Sixth Circuit, Stanley Matthews, Associate Justice. For the Seventh Circuit, John M. Harlan, Associate Justice. For the Eighth Circuit, Samuel F. Miller, Associate Justice. For the Ninth Circuit, Stephen J. Field, Associate Justice."

SUPREME COURT OF THE D. C.

IN EQUITY.—New Suits.

December 17.

11511. Reuben H. Andrews *vs.* John R. Hunt, trustee, et al. To release deed of trust. Com. sol., W. E. Edmonston.

11512. John King, alleged lunatic. Upon petition of Commissioners of the District of Columbia. To appoint committee. Com. sol., H. E. Davis.

11513. John F. Gainor, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., Same.

11514. Henry D. Barrett, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., Same.

11515. John Henry, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Col. sol., Same.

11516. Flora M. Latham, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., Same.

11517. Maria Davis, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., Same.

11518. Wm. L. Bramhall, trustee, *vs.* Frederick W. Sharon et al. Injunction. Com. sol., J. J. Johnson.

11519. Frank G. Wood *vs.* Harry Blakely et al. To dissolve partnership and for receiver, account and injunction. Com. sols., Carrington and Williamson.

December 18.

11520. Edmund G. Wheeler *vs.* Lot Flannery et al. Judgment creditor's bill. Com. sol., T. M. Fields.

December 19.

11521. Chas. A. Barker, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., H. E. Davis.

11522. John H. Dahl, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., Same.

11523. Wm. L. Bramhall, trustee, *vs.* Annie Dunkinson et al. To quiet title. Com. sol., J. J. Johnson.

11524. Sophia Sautter, guardian, *vs.* Chas. H. Miller et al. To sell infant's interest in lot. Com. sol., W. F. Mattingly.

December 20.

11525. John Miller *vs.* Wm. J. Morris. To enforce mechanic's lien. Com. sol., A. B. Duvall.

11526. George F. Ormsby *vs.* Wm. C. Whitney, Secretary of the Navy. To restrain defendant from depriving complainant from taking rank according to date of commission. Com. sol., G. F. Ormsby.

11527. Wm. H. Falconer *vs.* Joseph H. Falconer. To reform a deed. Com. sol., John Ridout.

11528. W. M. E. Smith *vs.* Catherine Kennedy et al. To appoint trustee, &c. Com. sol., Morris & Hamilton.

11529. Phineas M. Barber et al. *vs.* Chas. M. Hendley et al. To enforce mechanic's lien. Com. sol., A. B. Duvall.

December 21.

11530. John C. Athey *vs.* Anna L. Costin. Specific performance. Com. sol., A. A. Birney.

December 22.

11531. Wm. F. McFarland *vs.* Peyton D. Vinson. Receiver, injunction and account, and to dissolve partnership. Com. sol., D. S. Mackall.

11532. Wm. T. Wilson *vs.* Wm. T. Riggs et al. Com. sol., J. J. Johnson.

11533. John W. Bayne and wife *vs.* Chas. C. Adams et al. To sell—to make partition. Com. sol., John Ridout.

11534. Louis P. Shoemaker et al. *vs.* Geo. A. Tibbitts et al. To sell pt. "Slippery Hill." Com. sol., Same.

11535. John S. Pennebaker *vs.* Chas. D. Pennebaker et al. Com. sol., E. A. Newman.

December 24.

11536. Virginia Gardner, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., H. E. Davis.

11537. Wm. Hoff, alleged lunatic. Upon petition of the Commissioners of the District of Columbia. To appoint committee. Com. sol., Same.

11538. The Consolidated Electric Light Co. *vs.* Millard F. Halleck, adm'r. For assignment and injunction. Com. sol., H. B. Moulton.

11539. Richard H. Willet et al. *vs.* Cazenove G. Lee. To enforce mechanic's lien. Com. sol., W. G. Johnson.

11540. Same *vs.* Annie L. Cole. To enforce mechanic's lien. Com. sol., Same.

CIRCUIT COURT.—New Suits at Law.

December 17.

29225. George Killeen *vs.* Chas. J. Ortlip. Judgment of Justice Walter, $75. Plffs atty, D. E. Cahill.

29223. Shipweth Wilmer *vs.* Chas. N. Lobdell. Account, $100. Plffs attys, Beach and McCalmont.

29224. Wm. F. Salter, trustee, use of E. W. Clark, *vs.* George E. Calvert. Judgment of Justice Strider, $62.25.

December 18.

29225. Lory S. Kildow et al. *vs.* Mount, Orr & Co. Account, $100. Plffs attys, Garnett and Mackall.

29226. The Phœnix Mutual Life Ins. Co. *vs.* James W. Walsh et al. $891.87. Plffs attys, Coleman and Offley.

29227. Enoch Pratt, use of Seth H. Whiteley, *vs.* Wm. T. Riggs. Account, $6,000.00. Plffs atty, T. A. Lambert.

29228. Pliney C. Merry *vs.* Barton Fisher. Judgment of Justice Strider, $84.46. Plffs atty, Same.

29229. Iron Clad Manufacturing Co. of N. Y. State *vs.* Isaac A. Rosecrans. Account, $233.84. Plffs attys, Birney & Birney.

29230. George R. Wilson, Jr., *vs.* George F. Brott. Account, $376.70. Plffs atty, C. M. Smith.

December 19.

29231. Minnie Julius *vs.* Chas. C. Duncanson, trading as Duncanson & Brothers. Replevin. Plffs atty, B. A. Lacy.

29232. Amasa C. Paul, Adm'r, *vs.* Shelby M. Cullom. Damages, $10,000. Plffs atty, Twombley & Brown.

December 20.

29233. George G. Cornwell et al. *vs.* Camil Solari et al. Account and Notes, $4,579.73. Plffs atty, E. H. Thomas.

29234. Howard G. Douglass *vs.* Joshua C. Wright et al. Replevin. Plffs atty, Williamson & Philips.

December 21.

29235. Wash. B. Williams *vs.* C. W. McAllister. Replevin. Plffs atty, J. J. Wilmarth.

December 22.

29236. George T. Stewart *vs.* George H. Thomas, Judgment of Justice Strider, $100,00. Plffs atty, H. C. Stewart, Jr.

29237. B. H. Warner & Co. to use of Dissie H. Hellen *vs.* Richard H. Goldsborough. Account, $280. Plffs atty, F. H. Mackey.

December 24.

29238. Michael B. Harlow et al. *vs.* Braxton B. Johnston. Account, $120.31. Plffs atty, H. O. & R. Claughton.

29239. Oscar Dunlap *vs.* John C. Black. Damages, $100,000 Plffs atty, J. G. Bigelow.

December 26.

29240. John T. Dixon *vs.* Barney McQuade, Notes, $387,84. Plffs atty, R. Hagner.

29241. Gore, Janney & Co. *vs.* Arthur W. Harrison. Judgment of Justice Strider, $71,30.

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Notice of Election.

THE REGULAR MEETING of the STOCKHOLDERS OF THE LAW REPORTER COMPANY of Washington City, will be held at the office of said Company, No. 503 E STREET, NORTHWEST, in said City, on Monday, January 14, 1889, for the election of Trustees of said Company. Polls will be open from 12 M. until 1 o'clock P. M., of said day.

WM. F. MATTINGLY, President.

FRANKLIN H. MACKEY, Secretary.

Legal Notices.

Rule of Court.

RULE 20. * * * * *Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by rules of Court, or by any order of Court, shall be published in* THE WASHINGTON LAW REPORTER, *during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 22d, 1888.

In the matter of the Estate of **Mary C. Maccubbin**, late of the District of Columbia, deceased.

Application for the Probate of the last Will of the said deceased, has this day been made by Mary A. Galt.

All persons interested are hereby notified to appear in this Court on Friday, the 18th day of January, 1889, next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
52 H. E. Davis, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

John L. Maffitt. vs. Emma H. Maffitt et al. } 11,167. Equity Docket 28.

On the report of Myron M. Parker and A. Macdonald McBlair, Trustees, of the sale by them made of Lot 19, square 255, in the City of Washington, District of Columbia, for the sum of eleven thousand three hundred dollars ($11,300) to Mary McAuley, it is this 19th day of December, 1888, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 20th day of January, 1889.

Provided a copy of this order be published once a week for three successive weeks in the WASHINGTON LAW REPORTER, before said 20th day of January, 1889.

W. S. COX, Justice.

A true copy. Test: R. J. MEIGS, Clerk.
52 By L. P. WILLIAMS, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Thomas J. McElhenny**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of December, 1888.

KATE V. EGAN, Ex'x, 1304 6th st. n. w.
52 M. J. Colbert, Proctor.

Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Richard R. Crawford**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 21st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 21st day of December, 1888.

LAURA J. CRAWFORD, Adm'x,
3629 O st. n. w.
52 No. 3273 Ad. D. 14. M. F. Morris, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John Henry Albers**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 14th day of December 1888.

ELIZABETH ALBERS, Ex'x,
1345 14th st. n. w.
52 No. 2558. Ad. D. 13. Jas. F. Scaggs, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Barbara Niemann**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 14th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 14th day of December, 1888.

E. CAMPBELL,
HENRY NIEMANN,
Executors,
425 1st Street, n. w.
52 No. 3312. Ad. D. 14 J. Carter Marbury, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 21st 1888.

In the case of Mary J. Jones, Executrix, of Jane Northedge, deceased, the Executrix aforesaid has, with the approval of the Court, appointed Friday, the 11th day of January, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the Executrix will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
52 No. 2507. Ad. D. 13. W. K. Du Hamel, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Catherine Hutchinson et al. vs. John Cornelius Hughes et al. } No. 10,979 Eq. Docket 27.

William H. Sholes, the trustee herein, having reported to the Court that he has sold to John Miller lot 15, in square 697, in the City of Washington, containing 3431 square feet, at 35 cents per square foot, aggregating $1,200.85, it is, this 24th day of December, A. D. 1888, ordered that said sale be ratified and confirmed, unless cause be shown to the contrary on or before the 24th day of January, A. D. 1889.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said last-mentioned date.

W. S. COX, J.
52 A true copy. R. J. MEIGS Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
December 14th, 1888.

In the matter of the Estate of **Martha Louise Markland**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has this day been made by Fanny Beall.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of January, 1889, next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
51 Allen Rutherford, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
December 14th, 1888.

In the matter of the Estate of **John W. Sheckells**, late of the District of Columbia, deceased.

Application for the Probate of the last Will and Testament and for Letters Testamentary on the Estate of the said deceased, has been made by James McElfresh.

All persons interested are hereby notified to appear in this Court on Friday, the 4th day of January, 1889, next at 11 o'clock a. m., to show cause why the said Will should not be proved and admitted to Probate, and Letters Testamentary on the Estate of the said deceased should not issue as prayed.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

By the Court. W. S. COX, Justice.
Test: DORSEY CLAGETT, Register of Wills.
51 No. 3286. Ad. D. 14. S. C. Mills, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term in Equity.

Flora C. Swearinger, Complainant, vs. **John W. Swearinger**, Defendant. } Eq. No. 11257. Docket 28.

On motion of the complainant, by Mr. D. S. Mackall, her solicitor, it is, this 19th day of December, A. D. 1888, ordered that the defendant, **John W. Swearinger**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

Provided this order be published in the WASHINGTON LAW REPORTER once in each of three successive weeks before said day.

The object of this suit is to obtain a divorce *a mensa et thora* from the defendant on the ground of cruelty and desertion.

By the Court. (Sd.) W. S. COX, J.
True copy. Test: R. J. MEIGS, Clerk, &c.
51 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 24th day of December, 1888.

John A. Donaldson vs. **Eli Michael et al.** } No. 11094. Eq. Docket 28.

On motion of the plaintiff, by Mr. Franklin H. Mackey, his solicitor, it is ordered that the defendants, **Cassandra Shefler, John Henry Michael, Edwin B. Gilback, George Gilback, Agnes Gilback, William Gilback** and the unknown heirs of **Sara Boswell**, cause their appearance to be entered herein on or before the first rule-day occuring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to correct a deed from the Howard University to Cassandra Donaldson, purporting to convey to her, lot six (6) in block six (6) in the "Howard University" sub-division of the farm of John A. Smith, commonly known as "Effingham Place" in the County of Washington, District of Columbia; also to annul a certain deed of said property made by John A. Donaldson to Eli Michael.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
52 By H. W. HODGES, Ass't Clerk.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
Holding a Special Term for Orphans' Court Business.
December 15th, 1888.

In the case of Mary M. Bennett, administratrix c. t. a. of **Edward Bennett**, deceased, the administratrix c. t. a. aforesaid has, with the approval of the Court, appointed Friday, the 11th day of January, A. D. 1889, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control; when and where all creditors and persons entitled to distributive shares (or legacies) or a residue are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched, otherwise the Administratrix c. t. a. will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
51 No. 2912. Ad. D. 13.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **William H. Tenney**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of December, 1888.
ROBT. B. TENNEY, Ex'r,
Capital Mills, Georgetown, D. C.
51 No. 3309. Ad. D. 14. C. M. & H. S. Matthews, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Mary Ann Doniphan**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 11th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 11th day of December, 1888.
J. WALTER COOKSEY, Ex'r, Fendall Building, City.
51 No. 3304. Ad. D. 14.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 18th day of December, 1888.

Washington B. Williams vs. **Francis L. Norton.** } No. 29076. Docket —. At Law.

On motion of the plaintiff, by Messrs. J. J. Wilmarth and M. N. Richardson, his attorneys, it is ordered that the defendant, **Francis L. Norton**, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to collect bill of exchange for $552.41 and open account for $9.37, and to subject property attached in this cause to the payment thereof.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
51 By J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The 18th day of December, 1888.

Jonathan C. Calhoun vs. **Vercelona Calhoun.** } No. 11365. Docket 28.

On motion of the plaintiff, by Mr. Warren C. Stone, his solicitor, it is ordered that the defendant, **Vercelona Calhoun**, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is an absolute divorce on the ground of desertion and infidelity. It is further ordered that this order shall be published in the WASHINGTON LAW REPORTER for three successive weeks.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
51 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Edward Lloyd, Richard B. Lloyd. Francis B. Lloyd, Rosina Mackey, Rosalie M. Bradford, Malcolm Cudlip and Joanna Mackey, Plaintiffs, *vs.* Mercy M. Gray, Cordelia Linn, Arthur Costello, George Angel Costello and Benton Horne, Defendants. } At Law. No. 28981. Docket 33.

On motion of the plaintiffs, by Mr. Franklin H. Mackey their attorney, it is ordered that the defendant, Mercy M. Gray, cause her appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to recover the possession of the whole of original lot nine (9), in square six hundred and fifty-three (653), in the City of Washington, in the District of Columbia.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 J. R. YOUNG, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Alice Dulaney et al. *vs.* Thomas A. Dulaney et al. } No. 11467. Docket 28.

On motion of the plaintiffs, by Mr. B. F. Leighton, their solicitor, it is ordered that the defendants, Thomas A. Dulaney and Robert H Ward, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to make partition by sale of the real estate in complainants' bill described, and to substitute a trustee in place of the said Robert H. Ward, trustee under a certain deed of trust set out in said bill.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 11th day of December, 1888.

Theresa M. Lynch *vs.* Daniel J. Lynch. } No. 11443. Eq. Docket 28.

On motion of the plaintiff, by Mr. A. B. Williams, her solicitor, it is ordered that the defendant, Daniel J. Lynch, cause his appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a divorce from the bond of matrimony with the said defendant on the ground of desertion.

By the Court. W. S. COX, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, Letters Testamentary on the personal estate of John Sullivan, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 30th day of November next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 30th day of November, 1888.

her
MARY ⋈ SULLIVAN, Ex'x, 925 N. J. ave. n. w.
mark.
50 No. 3250. Ad. D. 14.

Legal Notices.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of December, 1888.

Laura A. Blincoe *vs.* Joseph Blincoe. } No. 11457. Eq. Docket 28.

On motion of the plaintiff, by Mills Dean, Esq., her solicitor, it is ordered that the defendant, Joseph Blincoe, cause his appearance to be be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to procure a divorce from the bonds of matrimony between the plaintiff, Laura A. Blincoe, and the defendant, Joseph Blincoe, on the ground of desertion.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 6th day of December, 1888.

William L. Bramhall et al., Trustees, Complainants, *vs.* Rebecca Britton et al. Defendants. } No. 11444. Eq. Docket 28.

On motion of the plaintiffs, by Mr. J. J. Johnson, their solicitor, it is ordered that the defendants, Rebecca Britton, Elizabeth M. Hardy, Mary J. Armstrong, Annie M. Smith, Clotildis Millard, Frances Millard, Eleanor A. Millard, Joshua J. Millard, Bessie Millard and Mary J. Burrows, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to quiet title to lot numbered eighteen (18), in square numbered one hundred and forty (140), situate in the City of Washington, in the District of Columbia, in the complainants'.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
50 By M. A. CLANCY, Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court Business.

December 7th, 1888.

In the case of Edward Godey, Executor, &c., of John W. Godey, deceased, the Executor aforesaid has, with the approval of the Court, appointed Friday, the 28th day of December, A. D. 1888, at 11 o'clock a. m., for making payment and distribution under the Court's direction and control, when and where all creditors and persons entitled to distributive shares (or legacies) or a residue, are hereby notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched; otherwise the said Executor will take the benefit of the law against them.

Provided a copy of this order be published once a week for three weeks in the WASHINGTON LAW REPORTER previous to the said day.

Test: DORSEY CLAGETT, Register of Wills.
50 No. 2860. Ad. D. 13. F. W. Jones, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Louis Kurtz, Sr., *vs.* Louise Kurtz et al. } Equity. No. 11284. Doc. 28.

Robert H. T. Leipold, the trustee herein, having reported the sale of the following described real estate, to wit: lots numbered twenty-four (24) and twenty-five (25), in square No. 480, which said sale and property is more fully described in proceedings and the trustee's report, and that the said property was sold to Charles H. Krey, at and for the sum of $4,900.00 cash.

It is, this 12th day of December, 1888, ordered and decreed, on motion of the solicitor for the complainant, that said sale be confirmed, unless cause to the contrary be shown on or before the 15th day of January, 1889.

Provided a copy of this order be published in the WASHINGTON LAW REPORTER once a week for three successive weeks before said day.

W. S. COX, J.
A true copy. Test: R. J. MEIGS, Clerk.
50 By L. P. WILLIAMS, Ass't Clerk.

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Legal Notices.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, has obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **John M. Graham**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 10th day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 10th day of December, 1888.

ELIZABETH GRAHAM, Ex'x, 704 13th st. n. w.

50 No. 3304. Ad. D. 14. D. E. Cahill, Proctor.

THIS IS TO GIVE NOTICE.

That the subscribers, of the District of Columbia, have obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Horace S. Johnston**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscribers, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under our hands this 1st day of December, 1888.

THURSTON B. JOHNSTON,
WALTER A. JOHNSTON,
Executors,
1000 Va. ave. s. w.

50 No. 3278. Ad. D. 14. Claughton & Claughton, Proctors.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters Testamentary on the personal estate of **Ira N. Burritt**, late of the District of Columbia, deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 1st day of December next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 1st day of December, 1888.

PAYSON BURRITT, Ex'r, 219 C st. s. e.

50 No. 3300. Ad. D. 14. Geo. F. Appleby, Proctor.

THIS IS TO GIVE NOTICE.

That the subscriber, of the District of Columbia, hath obtained from the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, Letters of Administration on the personal estate of **Michael Deviney**, late of the District of Columbia deceased.

All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof, to the subscriber, on or before the 5th day of October next; they may otherwise by law be excluded from all benefit of the said estate.

Given under my hand this 5th day of October 1888.

her
KATE ⋈ DEVINEY, Adm'x, 1038 5th st. n. e.
mark.

50 No. 3247. Ad. D. 14. Neal T. Murray, Proctor.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The 4th day of December, 1888.

William B. Webb et al. vs. Mathilda W. Stanton et al. } No. 11455. Docket 28.

On motion of the plaintiffs, by Mr. H. Randall Webb, their solicitor, it is ordered that the defendants, **Edwin M. Stanton** and **Sophy C. Stanton**, cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

The object of this suit is to obtain a new trustee to release lot D, subdivision in square 226, from the effects of a deed of trust, made to Edwin L. Stanton, now deceased.

By the Court. WM. M. MERRICK, Justice, &c.
True copy. Test: R. J. MEIGS, Clerk, &c.
By M. A. CLANCY, Ass't Clerk.

49

Legal Blanks.

THE LAW REPORTER CO. begs to announce to the profession that the following of its series of legal forms are now complete and can be obtained at the office of the Company, 503 E Street:

No. of Blank	Title of Blank.	Each	Per Dozen	Per Hun'd
1	Deed in Fee,	5c	50c	$3.50
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5	Trustee's Deed,	5	50	3.50
6	Court Trustee's Deed,	5	50	3.50
7	Chattel Deed of Trust	5	50	3.50
10	Receipt,	1	6	40
11	Rent Receipt,	1	6	40
12	Promissory Note,	1	6	40
13	Deed of Trust Note,	1	6	40
14	Declaration: Common Counts,	3	25	1.75
15	" General,	5	50	3.50
16	Stock Transfer,	2	10	75
17	Acknowledgment: With Wife, *Clerk's Certificate*,	3	25	1.75
18	Acknowledgment: Single, *Clerk's Certificate*,	3	25	1.75
19	Acknowledgment: With Wife,	3	25	1.75
20	" Single,	3	25	1.75
21	Notice of Trial,	2	10	75
22	Note of Issue,	2	10	75
23	Release: Short Form,	3	25	1.75
24	Undertaking for App. to G. T.	2	10	75

These Forms are examined and passed on by a committee of leading members of the Bar, are handsomely printed on Crane Bros. Linen Paper, with red marginal lines, are of uniform legal sizes, and on the whole constitute the finest set of legal forms ever issued in the District. Many other forms are in course of production, it being the intention of the Company to publish a complete set of law blanks.

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Attorneys at Law.

WASHINGTON, D. C.

ABERT, WILLIAM STONE, 408 Fifth st. n. w.

BELL, W. PEIRCE, *Counsel in Patent Causes* 625 F St. n. w.

BLAIR, JOHN S., 1420 F St. n. w.

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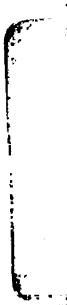

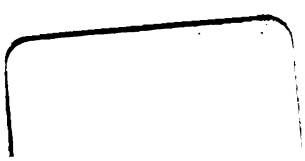

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